

5-1-2007

Using Published Arbitration Decisions to Develop Teaching Examples, Cases and Exercises

Margaret A. Lucero

Texas A&M University-Corpus Christi

Follow this and additional works at: <https://scholarship.shu.edu/omj>



Part of the [Organizational Behavior and Theory Commons](#), and the [Organizational Communication Commons](#)

Recommended Citation

Lucero, Margaret A. (2007) "Using Published Arbitration Decisions to Develop Teaching Examples, Cases and Exercises," *Organization Management Journal*: Vol. 4 : Iss. 1 , Article 5.

Available at: <https://scholarship.shu.edu/omj/vol4/iss1/5>

Using Published Arbitration Decisions to Develop Teaching Examples, Cases and Exercises

[MARGARET A. LUCERO](#)

Texas A&M University-Corpus Christi

A sample of arbitration decisions are published every year on a wide variety of topics including workplace fighting, theft, insubordination, attendance problems, alcohol or drug abuse, and sexual harassment. These published cases provide interesting, timely, and complex examples of actual events. Using this material as a basis, unique, realistic cases and exercises can be developed to focus on many different workplace topics.

Keywords: Case development, Exercises, Current management topics

Introduction

Have you ever wished for a recent example of sexual harassment or realistic scenarios depicting topics like insubordination, fighting on the job, or employee theft? Every year hundreds of arbitration cases are published profiling events and interactions between employees and their managers. These published decisions provide a wealth of information on these as well as many other topics, which can be shaped into interesting examples, cases, and exercises for use in management courses. Keeping students involved in their education often requires that instructors continuously update materials and examples to provide stimulating, cutting-edge instruction. The purpose of this paper is to discuss the basic components of published arbitration decisions and describe how this rich source of information can be transformed into classroom cases and exercises.

Since published arbitration decisions are based on actual work situations, the complexities of real life are depicted in every case. Many of these cases involve multiple issues that can be tapped for classroom use. The format of a published decision represents a conflict from an adversarial perspective, which provides multiple viewpoints and generally provides detailed information on how managers interacted with employees within a specific work context. This provides valuable information in a management course, since managerial behavior as depicted in a case can be profiled and examined during class. A sequence of events or interactions is generally included in each case, thereby providing a description of what occurred over a period of time.

Understanding Arbitration Decisions

Arbitration is the last step of a contractually established grievance procedure, in which an employer and its employees (usually represented by a union) attempt to resolve some type of dispute. Disputes between the parties are processed as grievances through a multistep procedure that is usually found in their collective bargaining agreement. Problems that are not resolved by the parties during the grievance procedure are then submitted to an arbitrator. The labor arbitra-

tor is a third-party neutral who is called upon to resolve a specific issue addressed during an arbitration hearing. The arbitrator's decision comes in the form of an "opinion" and an "award" which provides the resolution of the specific issue or issues defined in the case. The parties have usually pre-agreed to accept the arbitrator's decision as the final word in resolving the dispute (Fairweather, 1983). Each year some portion of the many cases that were decided are submitted by arbitrators and then accepted for publication in *Labor Arbitration Reports* or *Labor Arbitration Awards*.

The beginning of each published decision provides basic information about the case including the date of the hearing, the parties to the conflict, and the name of the arbitrator. This is followed by information indicating the nature of the dispute and the issue or issues that were decided by the arbitrator. When a dispute is submitted to arbitration, there is usually a specific question or issue presented to the arbitrator. For example, the question submitted to the arbitrator could take the form: Was ____ terminated for just cause and if not what is the remedy? (Fairweather, 1983) In discipline cases, information regarding the rule or rules that were violated is listed along with the relevant labor contract language that is the basis for the rule or rules. This information is defined as topics under which the case is indexed in each published volume. This preliminary section might also include information on the grievance process that preceded the arbitration hearing.

The substance part of an arbitration decision will usually begin with a detailed statement of the case. In most disputes there are some facts on which both parties are able to agree. In addition, if there are basic facts upon which the parties do not agree, the arbitrator will generally highlight these issues. Following this general information, the facts of the case are described in some detail. This section varies in length depending upon the complexity of the issues at dispute and the degree to which the parties agreed on the facts of the case. In this section, the arbitrator describes the circumstance that gave rise to the dispute being arbitrated. This section also might detail relevant past information, such as past discipline issued to the grievant regarding similar past offenses and related past grievances. In many cases, this detailed review of the issue or issues is sufficient to provide the basis for a case or classroom example.

The next two sections of the decision usually emphasize the aspects of the conflict that are disputed by the parties. The parties have the opportunity to present their side of the case during the arbitration hearing. Each party provides an opening statement, witnesses, evidence, and a closing argument (oral or written). This information for each party is usually summarized by the arbitrator in a separate section in which their positions are described in some detail. Each of these two sections provides the arbitrator's understanding of each party's side or argument. These sections often provide much more depth concerning the complexities of the case and can provide interesting information for classroom exploration. Additionally, there are often quotes or descriptions of the testimony, depicting important issues and conflicts.

Next, the arbitrator discusses his\her own views concerning the case. This "opinion" section explains how the arbitrator views any inconsistencies or conflicts in the testimony and evidence that was presented by the two parties. It also provides a reflection on the elements of the case that the arbitrator found to be most persuasive. More generally, this section should explain to the conflicting parties what the arbitrator decided and his or her reasoning for that decision. This

section is important because it provides a neutral viewpoint of the dispute separate and distinct from the sometimes highly charged, and often conflicting, positions of the disputants. In other words, after reviewing the entire record, the arbitrator describes what he or she thinks “really” happened.

The decisions made by arbitrators are based upon decades of labor precedence and well-established practices. In grievance cases involving discipline or discharge, arbitrators commonly use the “tenets or tests of just cause” to determine whether an employee has been dealt with appropriately by the employer (Fairweather, 1983). According to Arbitrator James Doyle (1957), just cause is a “standard which should be applied in a manner that will distinguish the unduly harsh, unfair, biased, prejudiced, or arbitrary action from the fair and reasonable judgment in which reasonable minds would concur” (p. 8527). Although there is no universally applied definition of just cause, many arbitrators subscribe to the tests of just cause as laid out by Arbitrator Carroll Daugherty (1966). Information regarding employer violations of the just cause standard are likely to be detailed in the opinion section of the decision. A detailed examination of the seven tests of just cause can be found in Koven and Smith (1985) or for a briefer discussion of the application of just cause principles and violations in discipline cases (specifically sexual harassment cases) see Lucero, Middleton, and Valentine (2004). Please see Appendix A for a list of the seven tests. An affirmative response to each of the seven questions indicates to the arbitrator that the employee has been treated fairly, and as a result, a decision will be made that supports the employer’s actions.

While most unionized employers are contractually required to abide by the seven tests of just cause, they can also provide valuable guidelines for managers in nonunion situations as well. Since this guideline incorporates due process and progressive discipline elements, managers who apply the just cause standard will be less likely to be criticized by subordinates as being unfair and should be more confident when taking disciplinary action. In addition, managers that apply the seven tests of just cause before imposing disciplinary penalties on their subordinates are more likely to have these decisions upheld by higher level managers or governmental review agencies such as the NLRB, or the EEOC. This standard also fits well with the organizational justice perspective, which highlights the need for fair outcomes and the use of fair procedures. Therefore, the use of arbitration decisions based on the tests of just cause tends to be instructive concerning the implementation and maintenance of a fair workplace and can provide depth to classroom exploration of the organizational justice perspective, as well as other more specific workplace issues.

Lastly, the arbitrator specifies an “award” if it is appropriate. The “opinion” describes the reasoning underlying the decision, while the “award” specifically indicates the arbitrator’s decision on the issue (Elkouri & Elkouri, 1997). Generally, the award, if favorable to the employee, includes a “remedy” which attempts to redress any damages (e.g., compensation) experienced as a result of the employer’s improper actions (Elkouri & Elkouri, 1997). The award will specify any compensation or actions that are required to provide a remedy to the wronged party. For example, an employee who was terminated could be restored to his/her former position with the employer and given back pay and benefits for all time lost. Alternatively, the arbitrator might support the employer’s decision, indicating that the discipline was appropriate and then no remedy is required.

The arbitration process exists in two forms, interest or contract arbitration and grievance or rights arbitration. Interest arbitration is used to resolve disputes that arise out of the negotiations over a new collective bargaining agreement, while grievance arbitration is used to resolve disputes concerning the interpretation or application of an existing contract (Elkouri & Elkouri, 1997). Such disputes fall into two major categories: contract interpretation and discipline/discharge cases (Elkouri & Elkouri, 1997). The discipline cases with their usual application of the just cause standard are particularly interesting for use in the management classroom. A disciplined individual becomes a grievant once they file a grievance regarding the employer's disciplinary decision. It is this type of arbitration award, therefore, that is the primary focus of this paper.

Creating Cases and Exercises

Based upon the facts and issues explored in the discipline/discharge arbitration decision, different types of cases and exercises can be created. Some of these have been used successfully in the classroom and are briefly described in the following sections.

Classroom Examples. Brief excerpts from several different arbitration decisions can add depth to a lecture or classroom discussion. For example, in a discussion of theft at work, the instructor could select actual employee examples, such as sleeping on the job, stealing money from a vending machine, faking an injury to collect workers' compensation, and leaving work without paying for a candy bar taken by a worker in a grocery store. Colorful examples from these real incidents can stimulate student interest in a topic and open up exciting possibilities for discussion. Alternatively, examples of illegal behaviors, such as sexual harassment, can be used to help students identify inappropriate employee behaviors.

Short Cases. A single or narrow set of issues can be easily profiled based upon the information in a specific case. A short case of one to four paragraphs might include information on the background and facts in a case of interest. To create a short case, the substance of the dispute can be derived from the section of the decision that describes the facts upon which both parties are in agreement. Any interesting or conflicting points provided during testimony can also be added to highlight the key issues in the case. This is a good way to stimulate interest and discussion on a particular topic, for example, exploring the basis for insubordination or the use of drug testing procedures.

The multiple viewpoints included in arbitration decisions can provide insight into many topics included in an Organizational Behavior course. The differing views of various witnesses or the perspectives of managers and their subordinates can be used to gain insight into the topic of perception. These perspectives can also be contrasted with the arbitrator's perception of the case. Leadership theories could be explored by studying the styles of the managers and their effectiveness in dealing with various employee behaviors. To discuss motivation concepts, case situations could be used to prompt student discussion on the factors that might have resulted in inappropriate employee behaviors such as theft or poor performance. Similarly, short cases might be used to depict concepts in group dynamics or communications.

A short case can also be used to depict a process or series of events. Again, drawing on the basic facts of the case, the underlying time dimension and activities over time can become a key focus. This would work well, for example, when exploring the underlying conflict process in a case or the escalation of poor employee behavior. Similarly, the unfolding of the manager's decision-making process might be traced through a case. Providing the time dimension allows a dissection of key facts, behaviors, or interactions as they emerged. Discussion questions can follow the case to direct student attention to the key learning points.

Longer Cases. A longer case format can be used to explore complex issues or a series of events in some depth. This longer format can be especially useful for examining employee-manager interactions. Correct and incorrect management actions and reactions can be explored and discussed to simulate management decision-making in the classroom. This author has had some success with breaking down complex cases into multiple segments, which can be discussed in a series during one or more class sessions. This is particularly useful in dissecting complex employee-manager interactions. Stopping the case analysis at a critical juncture allows discussion of what students think the manager should do and what are the likely responses of the subordinate. Then, in the next part of the case, the students learn what actually happened and can then discuss the outcomes.

In addition, the longer case format is a good way to explore the merits of a disciplinary action. A case can be dissected to examine management's application of discipline. For example, is there evidence of the use of progressive discipline in the case and is the penalty assessed reasonable? A more sophisticated discussion could be based around the use of the seven tests of just cause. In a discussion of the seven tests, students can be asked to identify if each test has been satisfied by the employer. Similarly, when using an organizational justice perspective, the various components of justice could be identified and discussed.

Management versus Union Exercises. The summaries of the management and the employee (union) positions provided in most cases can be used to emphasize adversarial approaches. One option is to give students summaries of both positions to analyze the strengths and weaknesses of each side. Alternatively, the class could be split with each side only receiving one party's arguments, with a debate used to focus upon key issues. A debate can be used to encourage the students to thoroughly understand both sides of an important issue. This could be a useful format where there are two obviously different perspectives, such as in a drug testing or sexual harassment case.

A more advanced use of this approach is the mock arbitration exercise. In this type of exercise, the students are given the facts of the case as well as information on each party's position. The students are divided into small teams and assigned management or union positions. Each team is required to choose an advocate or lawyer that can lead the team during the arbitration hearing. After preparation time is provided, one management team and one union team are brought to the front of the class to role-play the arbitration hearing. The instructor, another student, or an outsider (e.g. a practicing arbitrator) can be brought in to play the role of arbitrator. A mock hearing is conducted with each team calling witnesses (other team members or members of the class) to establish its case. This is a useful exercise for helping students understand the nature of the adversarial process as well as any issues highlighted by the case.

Research practice. Another more in-depth use of arbitration cases could include student research of these cases. This assumes that the published volumes of *Labor Arbitration Reports* and *Labor Arbitration Awards* are readily available for student examination. Students could be required to find one or more cases that are relevant to a specific topic. When paired with a writing assignment, the result could be interesting and unique learning opportunities. Alternatively, different perspectives on a theme could be discussed by comparing the case examples brought to class by the students. Since each student can become “an expert” on his or her own case, a deeper discussion of the topic might result.

Sample case

It is hoped that by now the reader has thought of his/her own ways to create interest and promote learning in the classroom using arbitration decisions. A sample case is included in Appendix B to demonstrate some of the ideas set forth in this paper. The sample case concerned with an on-the-job fight is one that the author has used many times in the classroom.

The obvious issue in this case is a conflict between two men that led to the termination for both due to fighting. This is an important topic given the increasing interest in aggression in the workplace. A case like this can be used to lead a discussion of the issues surrounding the fight including the obvious bullying behavior, inappropriate language, and management’s inattention to the previous behaviors. At a deeper level, it can be the basis of a discussion concerning the causes and escalation of the conflict process. Alternatively, it is a good avenue to highlight the use of progressive discipline and due process considerations. A more general application is to use the case to discuss diversity issues and individual difference concepts.

Conclusion

Published awards are a source of information on a broad range of topics for management courses. More importantly, they often cover some of the issues that are most challenging for today’s managers including attendance problems, drug and alcohol abuse, aggression, fighting, sexual harassment, as well as many other topics. This paper described examples of a number of different ways that arbitration decisions can be integrated into teaching materials.

Arbitration decisions are published in two separate sets of volumes. These volumes are available in most law libraries. Many other university libraries have one or both publications available in text or some other form such as microfiche or electronic access. Each volume is indexed by topic, which allows the user to find relevant cases in that specific volume. Each case is referenced by the volume number, then the initials LA for *Labor Arbitration Reports* or ARB for *Labor Arbitration Awards*, and the page number within that volume is listed last. Therefore, Daugherty’s classic decision (46 LA 359) outlining the seven tests of just cause would be found in volume 46 of *Labor Arbitration Reports* and starts on page 359.

Additional sources of these published volumes are available online through the respective publishers. *Labor Arbitration Reports* is a BNA publication (<http://www.bna.com/contact/index.html>) and *Labor Arbitration Awards* is published by CCH (<http://hr.cch.com/products/productid-158.asp>).

These two publishers provide additional search systems within their publications for a fee. The links provided above should take you to a site that will enable you to investigate the use of published decisions in your courses. For example, registering on the BNA website will provide free access for 30 days to view their published arbitration decisions using their system. By taking advantage of these offers, you can see the many types of issues raised in arbitration decisions and the richness of material that arbitrators include in their decisions. Please consult your local librarian to determine the best way to access these publications at your location.

Published arbitration decisions portray the complexities of life in contemporary organizations. This tends to make these materials resistant to student complaints that classroom materials do not adequately portray the difficulties of “real life.” In addition, sometimes students criticize cases for not including enough information to make a reasoned decision. This is less often a concern when using arbitration decisions, since the arbitrator generally includes all of the critical information that was considered when rendering the decision. The use of arbitration decisions has another distinct advantage. The arbitrator’s discussion in the summary of the decision reads very much like a teaching note. It commonly identifies the key issues, describes the weight given to these issues, and then provides the “right” answer along with the arbitrator’s underlying rationale. In summary, published arbitration decisions provide an ideal basis for creating distinctive teaching materials that bring important contemporary issues into the classroom.

REFERENCES

- Brand, N. (1998). *Discipline and discharge in arbitration*. The bureau of national affairs: Washington, D.C.
- Daugherty, C. (1966). Enterprise wire, 46 LA 359.
- Doyle, J. (1957). Iowa beef packers. 66-2 ARB 8527.
- Elkouri, F & Elkouri, E.A. (1997). *How arbitration works*. The bureau of national affairs: Washington, D.C.
- Fairweather, O. (1983). *Practice and procedure in labor arbitration*. The bureau of national affairs: Washington, D.C.
- Koven, A.M., & Smith, S.L. (1985). *Just cause: The seven tests*, San Francisco, CA: Coloracre.
- Lucero, M.A., Middleton, K.L., & Valentine, S.R. (2004). Protecting the rights of alleged sexual harassment perpetrators: Guidance from the decisions of labor arbitrators. *Employee responsibilities and rights journal*, 16(2), 71-87.

Appendix A **The Seven Tests of Just Cause***

Test 1: Did the employer provide the employee forewarning of the consequences of the employee's conduct?

Test 2: Was the employer's rule or order reasonably related to the employer's business?

Test 3: Did the employer make a reasonable effort to investigate?

Test 4: Was the employer's investigation fully and fairly conducted?

Test 5: Was there substantial evidence or proof that the employee was guilty as charged?

Test 6: Has the employer applied its rules, orders and penalties even-handedly for all employees?

Test 7: Was the degree of discipline administered reasonable?

* Arbitrator Daugherty's (1966) approach, which was later expanded upon by Koven and Smith (1985) provides an evaluation of just cause based on the answers to the seven questions above. According to Brand (1998), this set of standards is important as they incorporate the principles of both due process (procedural prerequisites for fair discipline) and progressive discipline (increasingly more severe discipline for repeated and similar offenses).

Appendix B **A Case of Provocation***

When Quality Assurance Manager Gloria Beach heard a commotion outside her office she emerged to see two employees Randy Garcia and Ben Dill under physical restraint. She immediately ordered both men into her office to discuss the matter. After hearing incoherent explanations from Randy and Ben, she ordered that both be escorted out of the gate.

The investigation that followed provided information regarding long-standing repressed anger and racial slurs. Employees described many incidents of racial taunts and slurs aimed at other workers by Ben Dill. Although this rude and abusive behavior had occurred over a number of years, the managers were unaware of the past incidents. The employees agreed that management usually took effective action when alerted to racial or sexual harassment. On this point, Randy explained that he did not report this behavior, as he did not want to "sound like a crybaby."

Witnesses indicated that they had heard Ben say that he hated Mexicans and he called Randy a derisive name. When a coworker warned Ben not to talk that way he replied, "I can say whatever I want. If someone touches me, they're the one that's going to be fired." Ben and Randy continued to fling a series of remarks at each other over the next few minutes.

The reports from witnesses about the altercation provided conflicting accounts. It appears that the escalating verbal exchange became physical when Ben grabbed Randy's shirt in his fist and pushed him backward with another racial slur. Then, Randy grabbed Ben and shoved him into a desk. The physical altercation lasted only about 20 seconds before coworkers restrained both men.

Sample Discussion Questions:

- 1) What are the key individual difference factors that describe Randy Garcia and Ben Dill? How did these differences contribute to their conflict?
- 2) Describe the conflict management styles of Randy Garcia and Ben Dill. Why were their conflict management styles important in this situation?
- 3) How should a manager react to this situation?
- 4) What type of discipline is appropriate for these two men? Is it appropriate to treat both men the same?

*Based on an arbitration decision by Arbitrator Herring 92 LA 1107

Margaret A. Lucero, Ph.D. is an Associate Professor at Texas A&M University-Corpus Christi, where she teaches undergraduate and graduate management courses. Her doctorate in Organizational Behavior and Management is from the University of Houston. Her current research focuses primarily on workplace justice issues, dysfunctional workplace behavior, and gender issues. Email: mlucero@cob.tamucc.edu

The author would like to give special thanks to Arbitrator Robert E. Allen for technical assistance on this manuscript.