

Mind Your Words

A school bus picks up children and an SUV passes it, even though the red lights are on and the STOP sign is extended. The driver has a few choice words that are muttered loud enough for the children to hear.

Or it's 110 degrees on the ramp and a baggage handler has to lift a heavy load into the belly of an aircraft that is literally steaming. The language the ramper uses might make a sailor blush.

Is this acceptable behavior for a worker who then gets disciplined for using profanity? Our rulebooks and common sense tell us that we should act professionally at all times. But we are also human and subject to tremendous stress on the job.

While our members have been disciplined and even terminated for using profanity at work, arbitrators understand that there are often mitigating circumstances that can reduce or even remove the discipline. They will ask what is the context of the outburst and is there acceptance of profanity as shop talk? Is the language part of abusive behavior or is someone cursing because the load is too heavy? Was the member goaded into this behav-

ior by a supervisor? The answer to any of these questions often lies with the details of the incident.

Profanity usually involves the use of offensive language. Vulgar words, cursing or swearing are often considered profanity. We know profanity when we hear it.

Most arbitrators will agree that cursing in the context of abusive conduct could result in a high degree of discipline including termination. Examples would be someone demonstrating gross disrespect for a coworker such as sexual harassment or acting insubordinate to a supervisor by using profane language where such conduct is unprovoked.

In the case of profanity and abusive behavior towards management, arbitrators will test for the issue of insubordination and provocation. They will also consider whether other employees witnessed the alleged abuse, whether the abusive language was used first by the supervisor, and whether a direct order was given and understood. Even when a member uses profanity with a supervisor, the company must follow due process. Stewards have successfully argued cases where the supervisor never handled the issue of alleged insubordination properly. Bottom line, unless there are repeated requests from a supervisor to an employee to stop using abusive language or that language is linked to insubordinate behavior, termination will generally not be upheld by an arbitrator.

When a member uses profane language with another member, again the issue is context. Arbitrators ask whether the language provoked an altercation, was the language really "shop talk," and/or whether the abusive language included threats or was grossly disrespectful. In the latter case, the question is whether there was sexual harassment, racial or other prejudice involved.

Where there really isn't abusive behavior, stewards have countered discipline

with the defense of shop talk. Profanity has always been part of the work environment. Stressful working conditions have only added to the use of profanity at work. Use of that language by itself not in the earshot of a client or passenger should not be a punishable offense.

The last point bears some caution. Those of us who work with the public, whether as flight attendants, bus drivers, onboard service workers, or subway conductors, need to be careful about our language.

Lastly, the National Labor Relations Board and court decisions have often sided with unions and workers who have used profanity in what is called "concerted activity." An example might be cursing a worker crossing a picket line or wearing a button at contract time that says, "WTF, Where's the Fairness?" These are Section 7 rights (of the National Labor Relation Act) and they are considered in most cases protected rights because they are exercised in the employees' right to communicate about the conditions of employment or in matters of mutual aid.

So what should the steward do? Make sure the employer's rule is clear and that if an order was given, it was clear and understood. Check to see that due process was followed and that the boss did a proper investigation. See if there were witnesses and read the statements to see if there were issues that could have triggered the language or if there were mitigating circumstances. Map out the context of the incident to prepare the best case. The use of shop talk is a defense but care must be taken in using it as a sole defense.



TWU History



Local 208 celebrates its 75th anniversary this year. Originally chartered to represent the transit employees of the Columbus and Southern Ohio Electric Company, the local now includes employees of the Central Ohio Transit Authority. Picture shows members receiving back pay awards in the 1950s.

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