

Preface to Second Edition

Much has changed in the work place in the last ten years, and those changes are reflected in arbitration awards. There are new rules to deal with technology, new rules to avoid work place behavior that creates litigation, and new tools to enforce work place rules. The pervasiveness of computers and Web-based resources has led to rules to prevent employees from using company time to surf the internet, while allowing reasonable use for personal business. Employers have realized that being able to conduct personal business during breaks and lunch hours now requires using the computer—as it once required using the telephone. The pervasiveness of e-mail and the false sense of privacy that it creates have led to rules for using company e-mail. Pervasive computer use has led to content, as well as use restrictions. Employees can surf the Internet on lunch hour but not go to porno sites. Employees can forward the latest jokes to their colleagues, but not if they are sexist or racist, or create a hostile work environment. Employers enforce these rules with new tools, such as server logs that show every Internet site visited by an identified computer. E-mails are sometimes randomly searched for certain terms that might indicate harassing or sexually explicit content. All of these changes are reflected in recent arbitration decisions. What this Second Edition also reflects, however, is that the arbitrators apply the same principles to disciplinary cases involving these new rules and technologies. Just cause is still just cause.

For instance, if an employee is disciplined for visiting a “porno site” and forwarding a joke that violates the company sexual harassment policy, arbitrators apply traditional just cause principles in deciding the grievance. Arbitrators consider whether there is evidence Grievant was using the computer from which the offending document was sent, whether there is a promulgated rule (or a violation so egregious it need not be embodied in a rule) about surfing and content, whether the rule is uniformly enforced, or whether management (perhaps through the behavior of managers) has condoned violations of the rule. The proof an employee visited the Web site may be the IP address assigned to

the employee's computer, Web logs showing the time of day and Web sites opened on that computer, and testimony (or digital photo logs) about when the employee was working. The tools and technology are new, but the principles are the same.

Principles such as just cause and progressive discipline are being applied in new contexts, but the advocate with a firm grasp of the principles discussed in this treatise will know how to argue the case. Sometimes the technology can be daunting. For instance, the validity of tests used to show the presence of adulterants in urine samples taken for drug testing requires some understanding of scientific methods and mathematical concepts. But over the last 50 years the parties have proven themselves adept at educating arbitrators about new technology—from word processors replacing typewriters to scan cards replacing time cards. Good advocates have integrated the results of the new technology into arguments based on the classic principles of labor arbitration.

This Second Edition does not introduce any startling new principles of labor arbitration. There are none. Rather, the most recent cases demonstrate how arbitrators have applied the principles in new, varied, and unique situations. We hope this Second Edition will help you see how the classic principles are applied to new situations, so you can most effectively argue your case.

One last word. This book is a collaboration involving many editors and researchers. Without them it would not have been possible.

NORMAN BRAND
MELISSA H. BIREN
Editors-in-Chief

September 2008