

## Facts and Contentions

- This is a grievance under article 16 of the labor agreement
  - Just cause is required for termination
  - It also requires a progress discipline, absent the existence of one of the “7 deadly sins”
- The union’s contentions are that:
  - the underlying incident for which Jo Lang was terminated was not of sufficient gravity so as to terminate his employment
  - that the company did complete progressive discipline
  - that an essential element of just cause is that the company consider all mitigating circumstance when terminating an employee and that they failed in this case to do so.
- The company’s contentions are that:
  - Lang’s actions on the day of the ride along was so egregious that they had grounds to terminate him.
  - That they followed principles of progressive discipline.
  - That the mitigating circumstances which are asserted by the union were not asserted until after the termination letter was sent.
- The Facts:
- Jo Lang is a 44-year old male who has spent his life believing that he wasn’t as smart as the next guy. He spent 11 years working as a delivery driver for Foods Selected for the Americas – or FSA. Throughout that time, he was often he was referred to by co-workers and supervisors as being “different.” But, as it turns out, Jo Lang simply has a common, treatable condition – Attention Deficit Hyperactivity Disorder – or ADHD. The Union asserts that Jo Lang’s condition explains the repeated instances of absent-mindedness which ultimately led to his termination from FSA. The Company asserts that during the time that Mr. Lang worked for the

Company no one had never told them about Mr. Lang's condition. Further, since they don't have a doctor on site, they have no clue what ADHD is or what its consequences are.

- The Company requires its drivers to use various technology tools, including a system called "Mobilecast" and cell phones. Mobilecast is a GPS system which allows the Company to track a driver's delivery route. The Company also issues company cell phones to its drivers for use while out doing deliveries.
- Jo Lang was terminated for failing to use available technology – specifically Mobilecast and his cell phone. The Company also cites three incidents in Jo Lang's termination letter. (See the termination letter.)
- Jo Lang will testify that these incidents weren't clear violations because, among other things, Mobilecast and his cell phone didn't always work the way they were supposed to. For instance, Jo Lang often had problems logging into Mobilecast, and the battery in his company-issued cell phone often didn't hold a charge.
- The union grieved Jo Lang's suspension because it was unwarranted, but the grievance was not addressed before Jo Lang was terminated.
- The Union asserts that Mobilecast and the cell phone weren't absolutely necessary for Jo Lang to complete his deliveries in the first place. That he was able to do his job just fine without them.
- Jo Lang will also testify that he was being unfairly targeted by his immediate supervisor, Ronnie Lowe.

- Jo Lang asserts that his ADHD is a major reason why he has had problems focusing and paying attention to Mobilecast and his cell phone.
- However, he hasn't had a chance to treat his condition with medication since his termination because he doesn't have health insurance. But if he was reinstated, his health insurance would cover the treatments.
- Roger McDermott is the union's business agent. He'll assert that FSA was heavy-handed in disciplining Jo Lang. Roger McDermott will also testify that he alerted FSA to Jo Lang's ADHD condition, but that FSA did nothing.
- FSA will likely present evidence that it had no idea that Jo Lang had ADHD until after they terminated him. Jo Lang will provide many instances where his FSA supervisors spoke with him about his pattern of mental lapses. He asserts that his supervisors knew something was wrong with him well before terminating him.

#### Union Arguments:

- FSA did not have just cause to terminate Jo Lang.
- His termination was too harsh given the minor misconduct of not using Mobilecast and his cell phone.
- The termination was punitive rather than corrective, especially because he was being targeted by his supervisor.
- That Jo Lang's ADHD is a mitigating circumstance which warrants his reinstatement, with full back pay and benefits.

## **Foods Selected for the Americas**

### **Written Warning**

To: Jo Lang  
From: Robert Fink

#### **FACTS:**

Jo, on March 13, 2008 you failed to Log on to Mobilecast prior to departing the dock and/ or leave voicemail message at ext. 2758 detailing the error message received if log on was not possible. You also did not check your phone for missed calls between each stop. You have to call the office to determine if a missed call was generated from office personnel needing to communicate with you.

#### **SPECIFIC COMMENTS OR WARNINGS:**

This is a Written Warning instructing you to:  
Log on to Mobilecast prior to departing from your origin dock.

If log on to Mobilecast is not possible call ext. 2758 and leave a voicemail with the error message from the Mobilecast unit prior to departing from your origin dock.

Check your company cell phone for missed calls after each delivery.

If you receive a missed call you are to call and speak to a Transportation Supervisor.

## **Foods Selected for the Americas**

TO: Jo Lang

FR: Ronnie Lowe

RE: Failure to Use Available Technology -  
Follow Established Procedures and Policies

Jo:

On Monday 8/25/2008 you left your delivery manifest, invoices and dark stop keys at the branch when you departed for your route. Your mistake was caught and the driver foreman called your cell phone to get you turned around before you traveled too far. You failed to turn your cell phone on when you punched in and you could not be reached. These errors caused your deliveries to be delayed by 1 hour. I questioned you on both errors to which you replied, "I Left my paperwork behind when I broke from way normal procedure" and "I thought I turned on my phone but never saw it power up".

These mental lapses continue to plague your work efforts. In the past year you have received 2 warning letters and 1 suspension letter for Failure to follow Established procedures for behaviors like:

1. Failure to check your company phone between stops.
2. Failure to call office when phone reflects 'missed calls'
3. Failure to call and communicate that you had fallen behind planned delivery time by 1 hour or greater
4. Failure to keep accurate delivery record of your arrivals/departures on your delivery manifest.
5. Failure to log on to mobilecast/ notify transportation supervisor if unable to get logged on prior to leaving branch

This is a Suspension Letter highlighting your need to follow Established Procedures and Policies including but not limited to your use of Available Technology such as:

1. You must have your company issued phone turned on and ready for use at the start of each day.
2. You must check your phone for missed calls between each stop. If your phone shows a missed call you must call the transportation office to determine who needs to communicate with you.
3. You must call and speak to a transportation supervisor if you fall behind your planned delivery schedule by one hour or greater.
4. You must continue to call every two hours to update your progress through the end of your day unless you are able to catch up to less than one hour behind.
5. You must accurately detail your deliveries on your driver manifest.
6. You must log on to mobilecast before leaving the yard. If you cannot get logged on to mobilecast you must leave a message for your team leader prior to leaving the yard.

## **Foods Selected for the Americas**

Your three (3) day suspension will begin on Monday 9/1/2008 and include Wednesday 9/3/2008 and Thursday 9/4/2008.

You will be eligible to return to work on Friday 9/5/2008. Continued infractions will result in further disciplinary action up to and including discharge.

# TEAMSTERS LOCAL 666

September 15, 2008

Robert Fink  
Transportation Manager  
FSA  
PO Box 232340  
Woodberm, OR 97070

RE: Grievance, Jo Lang Suspension

Dear Robert:

In order to preserve all rights under the Collective Bargaining Agreement currently in force between the Company and Teamsters Local 666, this letter is to provide written notice of receipt of a written grievance filed by Teamsters Local Union No. 666.

Recently Food Services of America has started issuing discipline with an extremely broad and vague definition of the discipline being issued. This is resulting in our members being in danger of not only suspensions, but also terminations as well. We believe that the language in Article 16 is clear and that discipline needs to be of the same type of misconduct and not a broad stroke definition.

Also, for the incident that caused the suspension, another employee could have delivered the manifest, invoices and keys to Mr. Lowe but that employee did not have his phone on and no discipline was issued to that employee. It would seem that FSA is on a mission to terminate Mr. Lowe and Teamsters Local No. 666 will diligently investigate and defend our members.

We request that not only do you restore Mr. Lowe all of his wages for lost due to this suspension, but also that you make him whole for any and all accrual benefits due him for the same time in question. We also request that the discipline be removed from bis file.

We would also like to sit down with you and more clearly define any discipline that has been issued to Mr. Lowe and, we are willing to meet at a time convenient for both of us to discuss the grievance and satisfy the contractual language.

If it is not your intent to do so then please contact me immediately is order for us to pursue the grievance in a timely fashion.

Sincerely,

Robert McDermott

# TEAMSTERS LOCAL 666

## **Foods Selected for the Americas**

TO: Jo Lang  
FR: Robert Fink  
RE: Failure to use Available Technology

Jo:

On Monday 9/26/2008 you failed to ensure your company issued cell phone was turned on and that you were logged on to mobilecast prior to leaving the Woodburn yard. This became apparent when you attempted to do both while driving down the road in route to your first delivery. Driver Team Leader Ron Lowe was present and witnessed the incident. When questioned concerning these incidents you replied that you thought you had turned the phone on but that you failed to watch it power on and that you didn't notice you were not logged on to mobilecast.

On Monday 8/25/2008 you left your delivery manifest, invoices and dark stop keys at the Woodburn branch when you departed for your route. The driver foreman caught your mistake soon after you had departed. He was unable to reach you as you had failed to turn your company issued cell phone on and you were not logged on to mobilecast. This resulted in you shutting down until the delivery equipment you left behind could be delivered to you. To highlight your responsibility to turn your company issued cell phone on prior to departing the branch you received a 3 day suspension on 8/29/2008.

On Thursday 3/13/2008 you fell behind your planned delivery times by more than an hour. An account that you were late arriving to needed some of the product on your truck for their lunch menu that day. The account called their salesperson who contacted Ron Lowe to determine when you would arrive at the account. Ron Lowe called your company cell phone but was not able to reach you. He attempted to send you a text message on mobilecast but found you were not logged on. When questioned concerning the phone and mobilecast issues you replied that you forgot to check your phone for missed calls between stops and that you forgot to call when you could not get logged on to mobilecast. To highlight your responsibility to ensure your company phone is on, that you must check for missed calls between stops and that you must log on to mobilecast or leave a message with your team leader detailing the error that would not allow you to get logged on you received a Warning Letter on 3/14/2008.

Repeated attempts have been made to express that it is your responsibility to ensure your company cell phone is turned on and that you are logged on to mobilecast prior to leaving the Woodburn branch each morning. These attempts have not been successful.

This Termination Letter serves to inform you that as of Wednesday 11/5/2008 you are no longer employed by Foods Selected for the Americas.

PERMANENT HEALTH SOLUTIONS  
NOTSOBORING, OR

JO LANG  
19424 SE CUMMINGS AVE  
GRESHAM OR 97081

Dear JAMES R LANG:

The enclosed records being provided to you at your request have received minimal screening for Information that may receive special protection under law if being released to anyone other than yourself.

Also, the records may contain Information that you may find sensitive in nature. Please beware of this if you decide to share this information with others. If you have any questions or need further assistance, please feel free to contact us.

Respectfully Submitted,

Susan Clanton, Release of Information Specialist  
Permanent Health Solutions, Release of Information Department

# PERMANENT HEALTH SOLUTIONS NOTSOBORING, OR

## Psychiatric Evaluation

Date of Evaluation: 12/1/08

Jo Lang is a 44 year-old divorced Caucasian who presents with concern and request for an evaluation for attention-deficit hyperactivity disorder out of his concern that he has been manifesting what he feels is symptomatology congruent with this for numerous years, or single episode childhood. Please note patient is not Medicare eligible not applying for Medicare.

### HISTORY OF PRESENT ILLNESS AND PSYCHOSOCIAL ISSUES:

Mr. Lang is seeking an evaluation for ADHD secondary to symptomatology that he feels has been contributing to difficulties in his interpersonal relationships and his occupational functioning for some time, and he dates it back to his childhood, particularly his elementary school. He reports that he was recently terminated from his position as a truck driver where he has worked for the past 11 years. He believes that his work problems are attributable to his distractibility, memory problems and general inattention to detail. Patient has done some reading and reviewing of symptoms that has been experiencing on the internet and feels that he wished to have an evaluation for ADHD. Patient states that he remembers symptoms of distractibility and inattention problems with sustaining attention during classroom. What is difficult for patient is he report he has always had difficulty with attending to details, listening, organizing and completing tasks. He reports that he has always been reluctant to engage in tasks that have required sustained mental effort and easily distracted, has low frustration tolerance and much "forgetting to do." For numerous years, as noted, patient dates this back to the 2nd grade. Restates he was often asked to leave the classroom because he was disruptive, distractible and inattentive. He states he was placed in a closet and spent numerous months there at school because of teacher's difficulties in managing his behavior and the disruption it created in his classroom. Patient at present is divorced. He has been divorced for 5 years after a 19-year marriage. He states that he filed for divorce because his spouse was abusing alcohol and drugs. They have 4 children with whom 3 live with patient. His parents divorced when he was a child. His father is 66 and his mother is 63. They have both remarried and they live in Utah. He describes his mother as chronically depressed. He is the elder of 2 children. His brother is 3 years younger and is a chronic drug addict and has spent numerous years in prison.

### CURRENT PSYCHIATRIC HISTORY

Patient reports that his sleep is rather disturbed. He states that he has a propensity to stay up too late at night and often gets on 3 to 4 hours of sleep a night. He denies any mania, though, or significant hypomania. He states that his appetite is stable. His mood is a combination of some anxiety and depression because he is worried about obtaining a new job and also his future and the termination of his work. His memory is somewhat off as is his concentration. He describes himself as somewhat of an avoidant of an individual. He exercises some. His energy level is stable. Denial of any suicidal or any homicidal ideation. He describes symptomatology from childhood congruent with ADHD. He procrastinates. He states that he was more hyper as a child and less as an adult. No other psychiatric symptoms of note.

### PAST PSYCHIATRIC HISTORY

None specifically reported. No previous treatments noted. No hospitalizations.

### FAMILY PSYCHIATRIC HISTORY

# PERMANENT HEALTH SOLUTIONS NOTSOBORING, OR

None specifically reported. Unknown for other family members, although as noted his brother has had repeated drug issues that have resulted in confinement.

## SUBSTANCE USE HISTORY

Patient describes abusing chemicals in the distant past but not in the last 15 years. He reports no alcohol abuse.

## MENTAL STATUS EXAM

Patient presented at the intake appointment neatly and casually dressed and groomed. He is cooperative and made good eye contact. His speech was normal as to rate and flow. Had a bit of an anxious presentation but goal-directed. Affect appropriate to content. No hallucinations, delusions, or thought disorder. Judgment appeared good and abstracting abilities were sufficient. Fairly self-aware.

## PATIENT'S STRENGTHS

Patient has held steady employment in the past and is committed to his children.

## PATIENT'S RISK ASSESSMENT

Denial of any ideation, intent or plan. Overall risk appears very low to absent. He does stress a lot about the loss of his job.

## FORMULATION

It appears that patient may carry some underlying anxiety and depression, but patient does appear to have symptoms throughout his life that have been congruent with ADHD. At this point more of an inattentive/distractible type, but perhaps as a child more of a combined type. Patient has never been tried on any stimulant medication and would like to consider this possibility. It appears that there may be some motivation on the patient's part to find and seek an assessment for this as a possibility of justification for re-employment at his present employer's. Patient did ask about getting a copy of his medical record after an assessment was made for ADHD; hence, the hypothesis that the patient may be looking for support with his employer to justify re-employment and there also was an explanation for his recurrent difficulties with memory on the job.

## DSM-IV DIAGNOSES

Axis I: Attention-deficit hyperactivity disorder, primarily inattentive/distractible type. 314.00c

Axis II: Deferred

Axis III: See Medical Record

Axis IV: Severe

Axis V: Current GAF: 62

Electronically Signed: Charting

Name: Clyde K. Glide, MS.MSW.LCSW

Dated Monday December 1, 2008 5:48 p

###END OF REPORT###

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NOTSOBORING, OR