

A PRACTICAL GUIDE TO DRUG AND ALCOHOL ISSUES IN ARBITRATION

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Drug and alcohol issues can arise in multiple sectors: the public sector, and in the union and nonunion private sector. The rules governing each sector can greatly differ. The most striking example of differences in applied rules is in the unionized private sector, where there is generally a lack of constitutional protections; yet these same federal and state protections are readily available to the public sector. The most notable federal constitutional protections lacking in the unionized private sector are the right of privacy and the right to be protected against unreasonable search and seizure. The caveat to the above private sector rule is the hybrid governmental category of highly regulated industries, such as railroads, etc., where unions consistently use federal constitutional cases to combat drug testing [1].

On the other hand, the unionized private sector can rely on the statutory rights of the National Labor Relations Act through the separately applied set of unfair labor practices of the law, which can be charged either by the union or management. Although drug testing has yet to fully come before the National Labor Relations Board (NLRB) or the courts, the general counsel has issued a guideline memorandum that analogies drug testing to physical examinations and has classified demands for drug testing as being a mandatory subject to be bargained over [2].

As a consequence of these conditions, arbitrators must fashion their awards with these rules in mind, especially when the right to privacy, as it relates to drug testing, is presented by the union in the unionized private sector in drug and alcohol cases. It is significant to note that the collective bargaining agreement is the governing contract and, therefore, serves as the basis for discrimination and enforcement, not the subjective decisions of the courts. The arbitrator is the interpreter of that contract and is bound jurisdictionally by it. Unlike judges,

arbitrators do not have to necessarily follow prior judicial decisions in arriving at their conclusions. Hence, arbitration awards do not necessarily reflect legal precedent.

The following practical questions on drug and alcohol issues are frequently posed by labor-management professionals who are not necessarily lawyers, as well as arbitrators who want current insight in this area. Therefore, these questions and answers should be viewed collectively as a handy reference guide for addressing upcoming, thorny issues in drug and alcohol cases in arbitration primarily for the unionized private sector. The varied backgrounds of arbitrators make it difficult to completely categorize the rationale underlying awards. However, where possible, the prevailing view of most arbitrators is conveyed with their rationales. Although most arbitration awards are not binding, as with judicial decisions, both can be persuasive.

It should be noted that the only document an arbitrator is bound by is the collective bargaining agreement, which the arbitrator must fairly and accurately interpret. Therefore, drug testing, drug and alcohol Employee Assistance Programs (EAP), and drug and alcohol offenses subject to discipline or discharge that are mutually agreed to by the parties are set forth in the collective bargaining agreement and must be adhered to as negotiated. Thus, these questions are compiled to shed some insight on what evidence should be presented and how it will be likely considered by many arbitrators in drug and alcohol cases.

1. Is the presentation of positive test(s) alone sufficient proof of a drug or alcohol violation? If not, what else is needed?

No. Test results alone are not sufficient for most arbitrators. Corroborative evidence such as grievant's behavior, demeanor, as well as physical looks (red eyes or drowsy-looking) must be presented together. Credible eyewitnesses or the foreperson's statement are also helpful and can be persuasive [3].

2. Will the Enzyme Multiplied Immunoassay Technique (EMIT) test alone be sufficient?

No. The EMIT is generally considered only an initial test [4]. The Gas Chromatography/Mass Spectrometry (GC/MS) test must confirm the findings of EMIT, as the GC/MS is more sensitive and specific, and can, to a high degree, eliminate false positives from prescription over-the-counter medications. Since even the GC/MS is not completely accurate, reliable corroborative evidence is also needed, especially for proof in impairment cases.

3. How do arbitrators treat alcohol-related offenses as opposed to drug-related offenses? Do arbitrators treat legal, prescription drug-related offenses differently than they do illegal drug-related offenses?

Most arbitrators treat alcohol offenses more leniently perhaps than they do drug-related cases because alcohol is a legal substance while nonprescription (street) drugs are not [5]. This same tolerant attitude among arbitrators appears to prevail with their treatment of misuse or abuse of prescription drugs as distinguished from illegal, nonprescription drugs. However, there is one caveat with

prescription drugs. The grievant is required to completely disclose his/her usage as well as any applicable warnings of the prescribed medication. If there is an omission of disclosure, management is most likely to prevail in most industries [6].

4. Do arbitrators consider the amount of alcohol or drugs taken when deciding on different levels of discipline and/or discharge?

It would appear that the amount of alcohol or drugs ingested does play an important role in the arbitrator's determination of the degree of discipline to be applied. For instance, the presence of one ounce of marijuana or a "roach" on the grievant will often be held as insufficient to support discharge except for "safety-sensitive" industries, to be discussed later, which requires a much higher level of scrutiny [7].

5. Is the place of consumption, that is, whether ingestion took place, "on" or "off" the job or workplace, a factor in an arbitrator's analysis to discipline and/or discharge a grievant? If off-duty usage occurred, was a sufficient nexus drawn between off-duty usage and on-duty performance?

Seemingly, arbitrators more frequently treat on-duty and on-the-premises drug and alcohol usage more harshly than off-duty and off-the-premises offenses [8]. Their decisions rely heavily on the assumption that on-duty usage increases the likelihood of impairment and thus creates a safety risk to others as well as oneself, and often results in lower job efficiency and performance.

Certainly the most perplexing areas of drug and alcohol cases occur when off-duty usage affects on-duty job performance either on the next work shift or the following day. In these instances, showing a sufficient nexus, though a critical requirement to proving intoxication and thus impairment, is often difficult to prove [8].

6. Does the amount of time the employee has worked for the industry serve to mitigate the discipline or prevent discharge? What if this is the first offense and the employee has an unblemished record and is an excellent worker?

Time in service is almost always a factor that is assessed, especially if the grievant is a veteran employee who also has an excellent work record [9]. Correspondingly, an employee with less of a long-term, quality service record is generally granted less consideration. However, neither of these general assessments is true for the special category of "safety-sensitive" industries where discharge is common for one drug or alcohol infraction [10].

Whether or not a first offender is given a lesser penalty again largely depends on the type of industry in which the offense took place. If the industry is a "safety-sensitive" industry, in which safety is the predominate, paramount concern for management, a much higher and stricter standard is applied.

7. What is considered a "safety-sensitive" industry? What is considered a "safety-sensitive" job? What standards will likely prevail and why?

Industries that have been categorized by arbitrators as safety-sensitive are: nuclear energy, oil and chemical, atomic processing, aerospace manufacturing,

coal mining, airlines and other transportation, as well as police and fire services. The common denominator of these industries is that all affect public safety or the public welfare [11]. Hence, the employees are held to a considerably higher standard than are those in less safety-sensitive work.

Safety-sensitive jobs include: boilermakers, crane operators, engineers, drivers of school buses, welders or inspectors at aircraft maintenance or rebuilding facilities, slaughterhouse fat-trimmers, and forklift operators. It would seem that arbitrators are less likely to consider mitigation, rehabilitation, or progressive discipline when grievants hold safety-sensitive jobs or are employed in "safety-sensitive" industries [12].

8. Suppose the industry has an Employee Assistance Program (EAP) and the employee has never been referred to it but is summarily discharged? Was the drug policy uniformly applied? Was there disparate treatment of just one employee or one particular group of persons?

If an employee is summarily discharged without ever being referred to an EAP, the discharge could be rightfully challenged. If there is an EAP in existence, it should be available to all employees on the same basis. That is, all referrals to it should be mandatory. If management invokes treatment in a discriminatory manner or makes referrals at its own discretion, the door is opened to the challenge of disparate treatment of certain grievants. These are the type of due process considerations that arbitrators scrutinize in arriving at their analysis of what constitutes fair and equitable treatment of grievants [13].

9. What happens when the grievant refuses to participate in the EAP? Suppose the grievant starts but does not complete the EAP? How do arbitrators treat this type of evidence?

Many arbitrators would look with disfavor upon a grievant who would categorically refuse help offered to treat, in some way, a drug or alcohol problem. Moreover, most arbitrators would also view a grievant's incomplete participation with EAP as demonstrative of a lack of concern for one's continuing employment. Hence, the grievance would more than likely be disallowed [14].

10. What is a "Last Chance Agreement" and when is it utilized? Under what circumstances does it become operative? Is its effect automatic? What if it is incorrectly applied?

A "Last Chance Agreement" is a negotiated agreement between the grievant and management allowing the grievant one, and only one, last opportunity to retain his job [15]. Although the Last Chance Agreement was devised to be automatically violative upon one future drug or alcohol infraction, arbitrators have not uniformly treated the negotiated agreement with that accord [16].

A Last Chance Agreement is usually operative when there have been repetitive, but serious usage problems. Arbitrators who incorrectly apply this agreement could be legally challenged as making an award beyond their jurisdiction [17].

11. Suppose the work rules were not well-known and not understood by the grievant? Are due process questions considered by arbitrators?

Yes. Due process assessments are regularly made by arbitrators. It is generally well-accepted by many arbitrators that work rules must be posted and employees must understand what constitutes a violation and the consequences of this violation before it is enforced [18]. Where an employer has failed to do either, most arbitrators would agree that a grievant cannot be disciplined for violations of those work rules.

12. What role does past practice of the industry play in drug and alcohol cases in arbitration? How is evidence of past practice considered by arbitrators?

Past practice generally comes into operation when the industry treats one employee differently from other similarly situated employees [19]. The union will, more likely, challenge management's diverse treatment of this grievant by focusing on the disparity of treatment. A disparate impact analysis is essentially a due process question. Such an analysis requires a fair, impartial assessment of similarly situated persons.

13. What is progressive discipline? When is progressive discipline utilized and under what circumstances?

Progressive discipline means when discipline is invoked on a gradual basis becoming increasingly more severe with each additional violation. Depending on the language of the collective bargaining agreement and the prior practice of the industry, progressive discipline is sometimes employed by arbitrators. However, arbitrators almost uniformly do not utilize progressive discipline in safety-sensitive industries nor in safety-sensitive jobs [20]. It would seem that safety to oneself, others, and the workplace in these types of situations are of paramount importance and cannot be jeopardized by the continued employment of a drug or alcohol offender.

14. Is "particularized suspicion" required for drug and alcohol testing or is "random" testing allowable?

As a general rule, random testing is viewed as unconstitutional except for safety-sensitive industries or safety-sensitive jobs because of the element of danger attached to this group. Arbitrators would probably agree that "particularized suspicion" is the likely standard for the majority of other unionized industries of the private sector [21]. Another recent test which is loosely defined but well-regarded by some arbitrators is the "totality of circumstances" test [22].

15. Suppose the grievant refused to take the drug and/or alcohol test? Is this automatically a dischargeable offense?

There is an old maxim that says a grievant should "obey now, and grieve later" [23]. This maxim is the overwhelming view of arbitrators when it comes to refusal to obey orders. Moreover, refusal to take a drug or alcohol test accompanies the inference that if taken, the test would render the grievant guilty. It is important to note that many collective bargaining agreements require employees to sign a consent form upon employment agreeing to take a drug or alcohol test if

requested. Thus, a refusal to take the test or a refusal to sign this consent form would amount to insubordination, an almost indisputably dischargeable offense [24].

16. What constitutes a “reasonable basis” or an arbitrator to conclude a grievant is impaired?

A finding of impairment is difficult especially in drug cases. The combined quality connection between reliable, credible corroborative evidence of eye-witnesses regarding the grievant’s appearance and behavior plus the dual, positive findings of EMIT and GC/MS drug tests is needed. Arbitrators differ greatly on the composite of evidence required. Note also the scientific community, at this juncture, still cannot numerically designate the cut-off point for impairment of drugs. The GC/MS is only 95 percent accurate. That is, one in twenty persons will receive an inaccurate reading [26].

On the other hand, impairment of alcohol is considerably easier to prove because arbitrators are more willing to accept the numerical level of many state statutes as to what constitutes “under the influence” and equate this with impairment. Moreover, blood alcohol content (BAC) tests as well as the Breathalyzer have been found to be accurate and a reliable evidentiary indicator of impairment [26].

17. Is lay testimony as opposed to expert testimony accepted in drug and alcohol cases as sufficient corroborative evidence?

Lay testimony is easily accepted in alcohol cases to corroborative positive tests results. However, in drug cases, lay testimony coupled with EMIT and GC/MS positive findings is frequently received with a great deal of hesitancy. Even expert testimony to corroborate positive tests is frequently not sufficient. The rationale of most arbitrators on this issue is that the drug offender’s behavior is difficult to identify unless a credible eyewitness can pinpoint the grievant’s behavior and appearance before and after drug ingestion for a comparative analysis [1].

18. Is the act of possession more severely disciplined than the act of selling drugs? Why?

The act of selling drugs is more serious and more disruptive to the workforce and negatively effects the efficiency and productivity of the workplace [29]. Correspondingly, arbitrators generally treat this offense more severely than the act of just possession: the act mostly of a user without the motive of profit. In making this determination, the amount of the drug found on or near the grievant plays a role as to the purpose of its ultimate use.

19. When a criminal case is pending for the same drug or alcohol offense that is before an arbitrator, how much weight should the arbitrator give to the criminal indictment and/or conviction?

Although more weight is probably given to the conviction than the indictment, a criminal conviction is not decisive of the outcome of an arbitration award [28]. Moreover, it is most likely but one factor considered in a case before an arbitrator.

It is important to note that the standard of proof in an arbitration award is rarely the criminal standard, beyond a reasonable doubt. The most common standard of proof applied in arbitration cases is probably the preponderance of evidence standard.

20. Under what circumstances would an arbitrator choose to reinstate a grievant without back pay? Is this often done in drug and alcohol cases?

It appears that some arbitrators are willing to mitigate the consequences of allowing the grievant his/her job back but without back pay when at least three things coincide:

- 1) There has been a marginal drug or alcohol offense such as: off-duty possession as opposed to an on-duty sale or distribution offense [29].
- 2) The grievant was not only a first-time offender but also an exemplary employee and possibly a long-term employee [30].

Although omitted from these questions, methodology is sometimes considered by arbitrators when it becomes a pivotal issue in the case. Since April 1988, Mandatory Guidelines for Federal Workplace Drug Testing Programs have been established by the National Institute of Drug Abuse and the Department of Health and Human Services and adopted by Executive Order 12564 for the public sector [4]. The private sector, in some industries, has seemingly attempted to pattern its methodology after the federal guidelines to preserve the integrity of the testing specimens and protect the situs of the tests.

Also since several questions dealt with Employee Assistance Programs (EAP), it is worth noting that this type of program must be bargained over. As mentioned earlier, drug testing is now treated as a mandatory subject of bargaining according to the NLRB's General Counsel Memorandum. Therefore any drug program promoted and instituted by management, without any input from the unions, is considered by most arbitrators to be unilateral and thus implemented without due process [31].

Lastly, since the recent advent of the Americans with Disabilities Act (ADA) and the classification of alcoholism and drug addiction under the umbrella definition of "disability," it will be interesting to see whether future arbitration awards and negotiated EAPs reflect this more tolerant trend. Some arbitrators have historically adopted the current analysis of treating alcohol as a disease and correspondingly are more apt to employ EAPs and mitigation such as the negotiated Last Chance Agreements [32].

Although future awards might reflect a more lenient trend in many industries, it would seem unlikely that safety-sensitive industries and safety-sensitive jobs would be correspondingly effected by this current trend. Safety, to oneself and others, in the workplace will probably always be an important and insurmountable issue in relationship to drug and alcohol offenses in the working arena of these particular industries and jobs where production and efficiency will likely prevail over tolerance of any disability.

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Since receiving her S.J.D. in 1988, Dr. McKissick has been a full-time labor arbitrator. She is on many arbitration panels, some of which are in: postal, coal, railroads, airlines and health care industries. In conjunction with the Social Security Administration and American Federation of Government Employees (AFGE), Dr. McKissick is presently conducting workshops on drug and alcohol issues facing the federal sector.

She is also a contributing author for Matthew Bender Publishing Company and recently co-authored Chapter 22 on Drug and Alcohol Issues in *Labor and Employment Arbitration*.

ENDNOTES

1. See generally Vaugh, Shore, Paulson and McKissick, Drug and Alcohol Issues, Chapter 22, *Labor and Employment Arbitration*, Matthew Bender Publishing Company, New York, 1993; Also see Haas, The Supreme Court Enters the "Jar Wars:" Drug Testing, Public Employees, and the Fourth Amendments, 94 *Dick L. Rev.* 305 (1990); Kirk, Employee Drug Testing: Federal Courts Are Redefining Individual Rights of Privacy, Will Labor Arbitrators Follow Suit? 44 *U. Miami L. Rev.* 489 (1989).
2. NLRB Office of the General Counsel, Guidelines Memorandum GC 87-5 (Sept. 8, 1987). Also see Johnson-Bateman Co., 295 NLRB No. 26, 131 LRRM 1393 (1989). Compare with Star Tribute, 295 NLRB No. 63, 131 LRRM 1404 (1989).
3. Weirton Steel Div., Nat'l Steel Corp., 81 ARB #8215 (Kates 1981); See also In Vivi Color, Inc. and Graphic Communications Workers Union, Local 508, O-K-1, AFL-CIO, 97 LA 851 (Strasshofer, 1991) (arbitrator relied on testimony of two company managers, who observed grievant's glassy, bloodshot eyes and slurred speech, impaired skills and general inability to operate complex equipment).
4. The National Institute on Drug Abuse and Department of Health and Human Services, Federal Register, Vol. 53, No. 69, 11 April, 1988; new regulations from the Department of Transportation were proposed 57 Fed Reg. 59.409 (1992); also see The Dial Corp. 92-2 ARB #8481 (Gordon 1992); Pioneer Aluminum, Inc. 92-2 ARB #8394 (Lumbley 1992).
5. In City of Kankakee and International Brotherhood of Teamsters, Local 705, 97 LA 565 (Wolff 1991) (arbitrator reinstated grievant, heavy equipment operator, contingent upon rehabilitation through Alcoholics Anonymous counseling notwithstanding his blood alcohol concentration three times legal limit, and on-the-job impairment).
6. See Atlas Processing Company and Oil, Chemicals & Atomic Workers International Union Local 4-245, 97 LA 361 (Baroni 1991), (where grievant simultaneously ingested methadone and fiornal, a legally prescribed drug, and admitted on the job

- impairment. Grievance denied in spite of unblemished sixteen years record because of safety-sensitive industry.) Cf. Anheuser Busch, Inc., 95 LA 495 (Miller 1990) (employee's four-week suspension for reporting to work in an impaired condition as the unexpected result to taking a prescribed painkiller reduced to one day for reporting to work in an unfit condition.)
7. In *United States Penitentiary, Leavenworth, Kansas and American Federation of Government Employees Local 919,91-2 ARB #8344* (Hendrix 1999) (discharge was too severe for off-duty possession and use for "less than 1/4 oz. of marijuana"). Also see *Bethlehem Steel Corporation., 79 LA 1185* (Sharnoff 1982) (old "roach," marijuana cigarette butt) found in bottle held insufficient to support discipline for possession because it was an insufficient quantity for consumption).
 8. In *Re J. F. Cassidy, Inc. and Commission House Drivers, Helpers & Employees Union, Local 400, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, 97 LA 808* (Oberdank 1991) (arbitrator held insufficient nexus to support discipline for off-duty alcohol intoxication in personal vehicle). Compare with *Motor Cargo, Inc. and Teamsters, Chauffeurs, Warehousemen and Helpers and Professional, Clerical, Public and Miscellaneous Employees, Local Union No. 553, 91-1 ARB #8175* (Jones 1990), (where arbitrator found sufficient nexus to support discharge for off-duty usage of cocaine while in possession and control of company truck).
 9. *Indiana Bell Tel. Co., 93 LA 981, 90-1 ARB #8133* (Goldstein 1989) (grievant, exemplary employee with twenty-four years of service, was reinstated without back pay for off-duty possession of marijuana in her shared home).
 10. *Piedmont Aviation/U.S. Air, 90-1 ARB 8134* (Haemmel 1989) (grievant, an 11-year veteran, was discharged for possession of marijuana while off-duty and off premises).
 11. *Atlas Processing Company and Oil, Chemical and Atomic workers International Union Local 4-245, 97 LA 361* (Baroni 1991); *Dow Chemical Company, Texas Operations and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Number 682, 90-1 ARB #8112* (Baroni 1989); *Piedmont Aviation/US Air and Jimmy Glenn Lodge 2444, International Association of Machinists and Aerospace Workers, AFL-CIO, 90-1 #8134* (Haemmel 1989); *Douglas Aircraft Company, Torrance Facility and International Association of Machinists & Aerospace Workers, District Lodge No. 720, 90-2 ARB #8434* (Ross 1990).
 12. *Avail, Inc. (A Ryder System Company) and International Brotherhood of Teamsters (IBT), Local 19; Airline, Aerospace and Allied Employees, 90-1 ARB #8279* (Sisk 1990); *GLI Holding Company and Amalgamated Council of Greyhound Local Unions, Local 1500, 90-1 ARB #8157* (Heinsz 1989).
 13. *Mead Products, 91-1 ARB #8246* (Fowler 1991); *Occidental Chem. Corp., 91-1 ARB #8016* (Zirkel 1990).
 14. *Kentucky-Tennessee Clay Co., 91-1 ARB #8204* (Albrechta 1991) (arbitrator relied on a number of factors to uphold discharge, including a finding that grievant, who occupied a safety-sensitive job, was "under the influence" while on duty, had been arrested for DWI while off-duty, and had declined to utilize EAP); Also see *Ellis Park, 92-2 ARB #8469* (Duda 1992) (employer improperly refused to rehire grievant following his completion of EAP two years after his discharge).

15. Quaker Oats Co., 91-1 ARB #8224 (Marcus 1991) (grievant was issued a "one last chance letter).
16. See Grinstead, *The Arbitration of Last Chance Agreements*, *Arbitration Journal*, March 1993.
17. MacMillan Bloedel, Inc., 92-2 ARB #8350 (Odom 1991) (grievant came to work drunk the third time after receiving a "last chance" warning, arbitrator found discharge to be severe and converted it to a "final" warning).
18. Mead Product, 19-1 ARB #8246 (Fowler 1991); Occidental Chem. Corp., 91-1 ARB #8016 (Zirkel 1990).
19. Piedmont Aviation/U.S. Air, 90-1 ARB #8134 (Haemmel 1989) (the employer had established a consistent past practice of terminating employees involved with illegal substances on-duty or off-duty regardless of ability to perform the job).
20. Dow Chem. Co., 90-1 ARB #8112 (Baroni 1990).
21. Potomac Electric Power Co., 88 LA 290 (Feigenbaum 1986).
22. See Occidental Chem. Corp., 91-1 ARB #8016 (Zirkel 1990); Shell Oil Co., 91-1 ARB #8448 (Massey 1991); Broward County Sheriff's Office, 91-1 ARB #8265 (Richard 1991); Pabco Gypsum Co., 90-1 ARB #8054 (Weiss 1989).
23. Some arbitrators have reinstated grievants without back pay, holding that they should have complied with the order and grieved later. See, e.g., Pepsi Cola Bottling Co., 93 LA 520, 90-1 ARB #8019 (Randall 1989).
24. For cases in which the grievant was found insubordinate, see Regional Transp. Dist., 94 LA 117 (Hogler 1989); Linde Gases, 94 LA 225 (Neilsen 1989). See generally Flannery, *Termination of Employment for Refusal to Submit to a Drug Test*, 40 *Labor Law Journal* 293 (1989).
25. Decresce, Mazura, Lifshitz and Tilson, *Drug Testing in the Workplace*, BNA, Washington, D.C., 1990.
26. Denenberg and Denenberg, *Drug and Alcohol Issues in the Workplace* (1983); Also see Denenberg and Denenberg, *Alcohol and Other Drugs: Issues in Arbitration*, BNA, Washington, D.C., 1991. Midwest Steel Division of National Steel Corp., 88 LA 457 (Wolf 1986) (breathalyzer reading of .02 justified finding employees was "under the influence.")
27. See, e.g., Martin Marietta Aerospace, Baltimore Div., 83-2 ARB #8542 (Aronin 1983). In *S. D. Warren Co. v. Paperworkers Local 1069*, 846 F2nd 827, 128 LRRM 2432 (1st Cir 1988) (the court ruled that the arbitrator exceeded her authority when she failed to uphold the discharge of employees who sold marijuana on company property in violation of contract language calling for discharge for such offenses).
28. See Indiana Bell Tel. Co., 93 LA 981 (Goldstein 1989) (where the arbitrator distinguished between off-duty possession and off-duty drug dealing and ordered reinstatement of a grievant who received a package of marijuana for her husband. The arbitrator concluded, however, that the employer acted appropriately when it suspended the grievant pending the outcome of the related criminal action). Also see U.S. Penitentiary, Leavenworth, Kan., 96 LA 127, 91-2 ARB #8344 (Hendrix 1990) (where the arbitrator held that discharge of a corrections officer because he had been arrested for possession of marijuana was unwarranted when the employee had been candid and forthright about the arrest. The discharge was reduced to a thirty-day suspension.)

29. Indiana Bell Tel. Co., 93 LA 981, 90-1 ARB #8133 (Goldstein 1989) (grievant, exemplary employee with twenty-four years of service, was reinstated without back pay for off-duty possession of marijuana in her shared home). See also *Champion Int'l*, 96 LA 325, 91-1 ARB #8185 (Staham 1991) (grievant with sixteen years of seniority made a drug sale, without a profit, as a favor to a friend).
30. Quaker Oats Co., 91-1 ARB #8224 (Marcus 1991) (grievant, first-time offender, had a clean work record and was a competent and trusted employee; he was reinstated without back pay for the possession of alcohol on company premises).
31. See, e.g., *Wheatland Farms, Inc.*, 91-2 ARB #8469 (Nelson 1991); *Pepsi Cola Bottlers of Youngstown, Inc.*, 90-1 ARB #8198 (Fullmer 1990).
32. See Bornstein, *Getting to the Bottom of the Issue: How Arbitrators View Alcohol Abuse*, 44 *Arb J.* 46 (1989); Bornstein, *Drug and Alcohol Issues in the Workplace: an Arbitrator's Perspective*, 39 *Arb. J.* 19 (1984). See, e.g., *Davis v. Bucher*, 451 F. Supp. 791, 796, 17 FEP Cases 918 (E. D. Pa. 1978): "There is medical and legal consensus that alcoholism and drug addiction are diseases although there is disagreement as to whether they are primarily mental or physical." For a recent arbitrator's view that alcoholism is a disease, see *Ellis Park*, 9202 ARB #8468 (Duda 1992).

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