

# Labor Relations: Court Upholds Arbitrator's Reinstatement Of Nurse Responsible For Infant's Death From Septic Shock.

A four-month-old infant was admitted to the hospital for second degree burns on her legs, feet and buttocks from a bathing incident involving hot tap water.

Two days into her stay the baby died from septic shock at 4:55 a.m. The night nurse working the 7:00 p.m. to 7:00 a.m. shift was determined to be at fault for failing to pick up on signs of septic shock.

The hospital terminated the nurse for serious substandard nursing practices. The nurse's union grieved her termination. The case went to arbitration as set forth in the union's labor contract with the hospital. The arbitrator held a full-scale hearing resembling a court trial. The nurse in question, another staff nurse and a student nurse on duty that night testified.

The arbitrator ordered the hospital to reinstate the nurse. The hospital sued in Federal District Court to set aside the arbitrator's decision. The District Court sided with the hospital, overruling the arbitrator.

The District Court acknowledged the union contract did call for binding arbitration of disciplinary disputes. However, the District Court ruled it would violate public policy to reinstate a nurse guilty of a serious lapse in nursing practices that resulted in a patient's avoidable death.

The public policy rationale is a legal trump card. If and when a court buys it it serves to negate a labor-management arbitrator's decision.

However, the US Circuit Court of Appeals for the Ninth Circuit refused to apply the public-policy rationale, overruled the District Court and ordered the hospital to abide by the arbitrator's decision.

## **Negligence vs. Intentional Misconduct**

There was no question the nurse was negligent and that her negligence caused the patient's death. However, the Circuit Court ruled the public policy rationale comes into play to reverse a decision to reinstate a nurse only when the nurse has been guilty of intentional, willful or callous misconduct, not ordinary negligence.

***An established national policy exists for settling labor disputes by arbitration.***

***That policy would be seriously undermined if the courts routinely had the final say on the correctness of arbitrators' decisions.***

***Both sides to a collective bargaining agreement have bargained for arbitration to resolve their disputes.***

***The general rule is that the courts only in rare circumstances will overturn an arbitrator's decision.***

***A rare circumstance where a court might overrule a labor-management arbitrator would be when the arbitrator's decision requiring the employer to reinstate an employee would violate public policy.***

***There is an important public policy that the safety of patients must be protected.***

***That only means that healthcare employers must remove nurses who have intentionally, willfully or callously provided substandard care.***

***A nurse who has committed an isolated act of negligence must be disciplined, but termination is too harsh a punishment.***

UNITED STATES COURT OF APPEALS,  
FIRST CIRCUIT, 2001.

## **The Circuit Court's Rationale**

The Circuit Court started with the basic language of the union contract. The contract stated no RN who had completed a probationary period could be disciplined or discharged except for just cause. The contract did not define just cause.

There was nothing in the union contract one way or the other about progressive discipline. That is, the contract did not explicitly say that an employee was entitled to warning, counseling, reprimand, suspension, etc., before being fired.

The union contract called for arbitration of disciplinary disputes between management and bargaining-unit employees.

## **Arbitrator To Define Just Cause**

Putting it all together, the Circuit Court said the arbitrator in this case had the authority and responsibility to interpret the phrase just cause in the union contract.

The arbitrator could decide what offense was serious enough to warrant what level of discipline and could also decide that firing an employee without progressive discipline was not just cause.

After the arbitrator determined what actually happened on the unit and how the contract applied to what happened, the strong national policy of the courts staying out of labor-management disputes came into play to support the arbitrator's ruling.

## **Public Policy For Safe and Effective Nursing Care**

The Circuit Court recognized that the state nurse practice act and nursing board regulations establish a strong legal policy in favor of safe and effective patient care by licensed professional nurses.

That being said, however, the Circuit Court believed the public policy meant that only a nurse who had intentionally disregarded nursing standards or intentionally abused or injured a patient could be ordered terminated over an arbitrator's considered decision that the nurse should be retained on the job. ***Boston Medical Center v. SEIU Local 285***, 260 F. 3d 16 (1st Cir., 2001).