

Aide Sleeping On The Job: Arbitrator's Decision Thrown Out.

A CNA was fired from a long-term care facility for violating the facility's work rule against sleeping on the job.

She was assigned to "fire watch" on one of the facility's residential wings, that is, she was simply expected to remain at the nurses station awake and alert through the night shift.

The aide grieved her firing through her union. The arbitrator chosen to hear the case ordered her reinstated. The facility appealed the arbitrator's ruling in Federal Court.

The US District Court for the Eastern District of Michigan threw out the arbitrator's ruling and upheld the facility's right to fire the aide.

The arbitrator saw mitigating circumstances which he felt made firing too harsh a penalty. However, according to the Court, the collective bargaining agreement gave the facility complete authority to make work rules and to define grounds for termination and said nothing about mitigating circumstances. The arbitrator was in error substituting his own judgment as to what the rules should have been. **SEIU Healthcare v. St. Mary's**, 2010 WL 2232218 (E.D. Mich., May 27, 2010).