

All employees are given a 1-day training that includes extensive discussion of the zero-tolerance workplace threats and violence policy. The company trainer repeatedly emphasizes the policy's provisions that there is no second chance for anyone (alleged victim or provocateur) who is involved in a physical altercation.

The shop foreman testified that even if an employee is defending himself, he would be subject to termination. However, the foreman also testified that there are "circumstances where the employee cannot get away" and he "judges those on a case-by-case basis".

In this case, the two employees had a history of not getting along. It was not a long history, because the grievant had only been employed for 8 months. The other combatant had been employed for 20 years.

No one witnessed the fight and the facts are in dispute.

There was however undisputed testimony on two matters. A few months earlier, a supervisor heard rumors of a heated argument between the same two employees and he arranged for them to shake hands and apologize to each other. Also, on the day before the incident in question, another employee overheard the 20-year employee say that he was going to "kick (the grievant's) ass", that the grievant was a "faggot, F---er, and bastard", and "If I see him on the street, I'm going to knock his ass down".

On the day in question the grievant and the long-term employee were working together. There was a problem with the parts and the grievant claims the long-term employee "got into my private space. ... so I put my hands up—palms out".

The 20-year employee then raised his fists. When the grievant saw him drop his shoulder as if to throw a punch, the grievant pushed him.

Accordingly to the grievant, the 20-year employee then started throwing wild punches. The grievant then threw one punch and hit the guy's nose. Blood came out. The grievant testified that he said, "enough, stop" and the fight ended. The 20-year employee went to a supervisor who saw the bloody nose, and ordered both fighters to leave the premises, which they did.

The 20-year employee testified that he did not confront the grievant and when he was pushed, he tried to run away. He did not throw any punches because he was concerned that a fight might be considered a parole violation (for spousal abuse).

Both testified that the other started the fight and that they acted in self-defense.

There was one witness who was 20 feet away, but he only heard the verbal altercation, and did not see any fight, nor the 20-year employee running away.

The Shop Foreman interviewed both with a Union Representative present.

The Shop Foreman determined that both could have walked away and notified supervisor, and thus, should be discharged for violating the zero-tolerance policy. The Union took the grievant's case to arbitration.

At the hearing, the Union argued that the 20-year employee had an undisputed history, in and outside the shop, of confrontational and violent behavior. Thus, the weight of the testimony should be that he was the provocateur. The CBA refers to "reasonable rules and regulations", and the Company's zero-tolerance policy must be reasonable in its applications.

The Company points out that the grievant is an 8 month employee, that he had a difficult relationship with the co-worker, and the earlier incident almost led to a physical altercation. Now, they are both yelling at each other, and neither seeks out a supervisor to help resolve their differences.

1. Should the grievant (the 8 month employee be fired)?
2. Why or why not?
3. What questions would you have for each grievant?
4. Would you fire the 20-year employee? Why or why not?