WHO MADE THE NACHOS?

Teaching Note

This teaching note was prepared by the authors and is intended to be used as a basis for class discussion. The views presented here are those of the authors based on their professional judgment and do not necessarily reflect the views of the Society for Case Research. The names of individuals, the firm, its location and relevant media outlets have been disguised to preserve anonymity. Copyright © 2014 by the Society for Case Research and the authors. No part of this work may be reproduced or used in any form or by any means without the written permission of the Society for Case Research.

**Overview**

For someone in a supervisory or management position, it is understandable that good judgment should be part of everyday life. What should management do when an employee has apparently “crossed over the line” and used social media to create a public safety issue? How should a manager prepare to manage the related crisis and appropriately deliver disciplinary action?

Although this multidimensional critical incident has several unusual aspects about it, it illustrates a common problem in organizations today. The problem is whether or not an employee’s personal posts on social media should have a bearing on his or her role in the organization. The authors have not found a company that has a policy that says “Employees should not urinate in the food!” This chain had the philosophy “Customer service is your number one job! Do whatever is necessary to exceed the needs of the customer!” Some customers would dismiss this antic as simply a prank, while others would be angry, disgusted, and concerned, placing the blame on management while deciding not to eat at a Taco Grande restaurant again.

We want students to consider this incident through several lenses: unexpected management challenges, options for managing the unthinkable, making recommendations that can be swiftly implemented, “just cause”, “due process”, documentation, and right of appeal.

**Research Methods**

The names of individuals, the firm, its location and relevant media outlets described in the critical incident and teaching note have been disguised to preserve anonymity. Information for the critical incident was gathered exclusively from secondary sources.

**Learning Objectives**

After reading and analyzing this incident, students should be able to:

1. Describe the continuing and unexpected challenges faced by managers.
2. Analyze the organizations’ options to deal with or manage the unthinkable.
3. Analyze and evaluate the dilemma and make recommendations to achieve the best outcome.
4. Define the disciplinary process of “just cause”.
5. Justify the need to document disciplinary actions and provide the right of appeal.

**Application**

This critical incident is suitable for courses in business, government and society, organizational behavior and leadership, business law, legal environment in business, hospitality, services marketing and management, and human resource management. The authors have used this case in graduate and undergraduate courses on-line and face-to-face.

**Questions**

1. If you were Melissa, what damage control could you do following Christopher’s actions? (LO1)
2. What are the major responsibilities that Taco Grande had to provide safe and healthy food to their customers? (LO1, LO2)
3. In O’Conner v. Ortega, the U.S. Supreme Court established the parameters of the Fourth Amendment’s protections of an employee’s right to privacy in the workplace. Does using the pictures posted on Twitter to discipline an employee violate an employee’s “zone of privacy”? How must a manager balance privacy laws with definitive social media policy? (LO3)
4. What processes and approaches ensure disciplinary action for just cause? (LO4)
5. Why does Melissa need to document the disciplinary actions she takes and provide the right of appeal? (LO5)

**Answers to Questions**

1. If you were Melissa, what damage control could you do following Christopher’s actions? (LO1)

*Risk is a four-letter word*. Managers like Melissa face many crises daily. In a 1994 interview, Jack Welch said, “The higher up the monkey climbs, the more his ass is exposed” (as cited in McGinn, 2002).

You need to make sure you know what Taco Grande’s plans and procedures are for crisis situations. If you do not know what to do when the unthinkable happens, go to upper-management and legal counsel. Christopher Roth’s postings have created a crisis for all of Taco Grande’s restaurants. We would hope that Melissa has the knowledge and autonomy (freedom) to act and that she will promptly fire or suspend Christopher.

Most students will note that Christopher should have self-regulated his behavior out of self-interest and to his need to meet reasonable standards. Melissa should not view the solution of the incident as a “knee-jerk reaction,” but it should be viewed as a thread in Taco Grande’s culture. The incident is a violation of trust between management and the employees, and between the business and its customers. Without great relationships between management, employees, and customers, integrity and trust are compromised. Melissa and upper-management will need to create a sense of caring and connecting with both customers and employees. They must realize that some customers who have gotten Taco Grande nachos in the past will wonder if their nacho meal was prepared by Christopher.

We like to have students look at the Johnson & Johnson (J&J) example, in which the company put consumer safety first when recalling and replacing 31 million bottles of Tylenol capsules after 7 people died in Chicago from using product that had been laced with cyanide. J&J was the first company to implement such a recall, which proved to be an excellent lesson in how to effectively deal with a crisis (Byrne, 1985, Rehak, 2002). We believe the J&J credo taught managers to focus on the company’s primary responsibility to the consumer -- to reduce risk and pain). Risk and pain will not look the same to all students or customers of Taco Grande. Melissa needs to confront the issues from her and all stakeholders’ perspectives. We like to say, “Do not be afraid! It is your job!” “Admit mistakes early and rectify errors!”

At minimum, Melissa would need to have a prepared statement to deliver to the effect that

1. Pending investigation the company has placed Chris on suspension pending investigation,
2. The store regularly receives passing marks on monthly health and safety inspections, and
3. Announce some sort of customer loyalty program to win back or retain customers
4. What are the major responsibilities that Taco Grande had to provide safe and healthy food to their customers? (LO1, LO2)

Restaurants are heavily regulated and regularly inspected to insure public safety minimize the spread of contagious disease. From a state and/or local level, Melissa should be prepared to have a health inspector standing at the front door of the restaurant when it opens. She should be prepared, as she would on any day, to explain and demonstrate safe food handling techniques. If this incident is being used in a hospitality or tourism course, we would expect students to bring up the Safe Food Handler program which provides training and certification in the five key areas of food handling: basic food safety, personal hygiene, cross-contamination and allergens, time and temperature, and cleaning and sanitation.

From a Federal perspective, the Occupational Safety and Health Act of 1970 (OSHA) ([www.osha.gov](http://www.osha.gov)) promotes public and employee safety by minimizing the threats of accidents and the spread of disease. Does OSHA apply to this situation? After having students review the OSHA Web site, ask them to justify their responses.

The most feared contagious disease is acquired immunodeficiency syndrome (AIDS). While the Americans with Disabilities Act of 1990 excluded AIDS as an infectious or communicable disease except in food-handling situations, the Supreme Court (Bragdon v. Abbott, U.S. Supreme Court No. 970-156, June 25, 1998) ruled that individuals infected with human immunodeficiency virus (HIV), not just those with AIDS, have a disability covered by the ADA. Hepatitis and herpes are other diseases that might concern customers who may be concerned they might have eaten contaminated food.

With these thoughts and concerns in mind, should Taco Grande Mexican Restaurants have a policy for dealing with food-tampering in the workplace? What would be an ideal policy? How would you publicize your policy? We would encourage students to make policy suggestions in light of laws, statutes and guidelines that are unique to their geographic location.

1. In O’Conner v. Ortega, the U.S. Supreme Court established parameters of the Fourth Amendment’s protections of an employee’s right to privacy in the workplace. Does using the pictures posted on Twitter to discipline an employee violate an employee’s “zone of privacy”? How must a manager balance privacy laws with definitive social media policy? (LO3)

Students can be assigned responsibility for searching the Web to find the current rights of the company to monitor employee activities on social media, as well as sample social media policies. The Society for Human Resource Management (SHRM) and Workforce.com websites are good places to begin looking for policy suggestions under the keywords “social media”. Based on this search, most students will conclude that you cannot have a policy statement to deal with every unimaginable situation. But they should develop a general policy statement that (1) details how management should prepare for the unthinkable, (2) a guide for who does what when the unthinkable occurs, and (3) a disciplinary policy that adequately punishes those that deserve to be punished.

Should Taco Grande Mexican Restaurants have a policy giving management the right to monitor the activities of its employees? Under what circumstances? What controls must be in place for the policy to be effective? Ask your students if they have ever placed a call to an organization and heard the following: “Your conversation may be monitored and/or recorded to ensure the (a) accuracy of your concern, or (b) to serve as a basis for further training and development of our employees.”

1. What processes and approaches ensure disciplinary action for just cause? (LO4)

The disciplinary process involves a series of five steps through which a manager should progress. Managers should investigate the situation, conduct investigatory interviews, maintain self-control, communicate the disciplinary action to the offending employee in private, and keep the violation relevant for an appropriate period of time.

Just cause is the standard for disciplinary action requiring tests of fairness and elements of normal due process, such as proper notification, investigation, sufficient evidence, and a penalty commensurate with the nature of the infraction. Disciplinary action should always have just cause and demonstrate due process, or it invites litigation against the firm. Further, the actions of the company may depend on the location of the incident.

Leonard and Cook (2005) identified Eight Tests for Just Cause:

1. Did the company give the employee forewarning of the possible or probable disciplinary consequences of the employee’s behavior? (Give Advance Warning)
2. Was the company’s rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the company’s business and (b) the performance the company might properly expect of the employee? (Clarify Expectations – Everyone Needs to Know the Rules of the Game)
3. Did the company, before administering discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or an order of management? (Investigate Immediately)
4. Was the company’s investigation conducted fairly and objectively? (Be Objective)
5. After investigation, was there substantial evidence or proof that the employee was guilty as charged? (Analyze the Evidence)
6. Has the company applied its rules, orders, and penalties evenhandedly and without discrimination? (Be Consistent, Uniform, and Impersonal)
7. Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee’s proven offense and (b) the record of the employee’s service with the company? (Punishment in Relation to the Offense)
8. Has the company kept records of the offense committed, the evidence, and the decision made, including the reasoning involved in the decision? (*Cover Your Rear – Be Sure to Document Specifically the Who, What, Where, When, Why and How)*(p. 133)..
9. Why does Melissa need to document the disciplinary actions she takes and provide the right of appeal? (LO6)

The purpose of disciplinary action should be to correct and improve the behavior of the erring individual and other members of the organization. The objective of disciplinary action should be to prevent future occurrences of the undesirable behavior.

Managers should keep records concerning employee performance, including incidents leading up to disciplinary actions. The burden of proof usually lies with the supervisor, and such records will help during grievance procedures. Throughout the process, if an employee believes that the disciplinary action was unfair, the manager should remind employees that they have the right to appeal the manager’s decision, to ask for a decision from higher management. Melissa must keep the following precautionary measures in mind when taking disciplinary actions:

1. Careful study and investigation.
2. Consideration in conducting investigatory interviews.
3. Avoiding emotional or physical outbursts.
4. Privacy in administering discipline.
5. Observing time element.

Regardless of how fairly and diligently the manager performs, there will always be some employees who, for one reason or another, fail to observe established rules and standards. To ignore situations requiring disciplinary action is to avoid a major responsibility of the managerial job. A manager must have the courage to meet disciplinary problems with prompt and firm action as required, keeping the following considerations in mind:

* A thorough study and investigation of a disciplinary situation, using a checklist of questions will usually prevent a manager from taking hasty, unwarranted, or faulty disciplinary actions.
* Investigatory interviews normally should be conducted in private and on an individual basis. If an employee requests that a legal representative or co-worker be present, this request usually should be granted. The manager is then well advised to have another legal counsel present when the investigatory interview is held.
* Highly emotional or physical actions should be scrupulously avoided by managers in virtually all disciplinary situations.
* Generally, it is better to discipline in private because this helps avoid embarrassment to the manager and the employee. Further, it may keep other employees from immediately judging the manager’s actions. Publicly disciplining an employee may build up resentment in both the employee and other employees who witness it.
* Time is always an important factor in a disciplinary matter. Disciplinary action should be taken as soon after the occurrence of the offense as possible. However, the manager should not take hasty action in situations where it will take time to investigate the circumstances surrounding the infraction.

The most drastic form of disciplinary action is discharge. It is reserved for the most serious offenses. Discharge represents a loss to the company, which must find and train a replacement. It is a major loss to the employee, who loses seniority benefits and who may have difficulty obtaining a comparable job. Because of the seriousness of discharge, discharge actions contemplated by a manager typically must be reviewed and/or approved by higher management or the human resources department. Authorities have referred to discharge as the “capital punishment” of the employment world. Noted leadership theorist John Kotter said, “Behavior change happens mostly by speaking to people’s feelings.”

The authors would have “suspended Christopher Roth, pending investigation”, very early the next morning. This would have provided the time and opportunity to seek advice from the human resources department and legal counsel. We would also have given him a chance to have his legal counsel and/or someone to be with him if a termination decision was deemed appropriate. We would tape the meeting and have him sign a summary of the meeting. If he admitted that the alleged behavior was true, then we would have terminated Christopher Roth and would have had him sign the termination agreement.

Discharge is the “capital punishment” for Christopher and he might challenge management’s decision if he believes it to be unjust. Today, many employees will appeal their discharge and pursue a case in court. Therefore, we will be prepared for this potential action with the documentation of our actions.

**General Discussion**

Unfortunately, crisis management has become a vital part of every supervisor’s responsibilities. Have your students scan the local newspapers for recent events that depict how crisis situations can suddenly appear. Think of the challenges presented from that scenario.

Taco Grande Mexican Restaurants does not have a rule that specifies that employees should not post pictures on social media (i.e. Facebook, Twitter, Instagram, Snapchat, Vine) showing them urinating in customer’s food. We suggest that your students should be encouraged to put themselves in Melissa Black’s shoes. They should make a list of all that Black should do to cover the company’s backside and possibly use the forthcoming publicity to somehow grow the business while maintaining a safe and productive workplace. It should be pointed out this is a difficult balancing act.

There are several discussion questions that you may use to guide your students’ thinking. *There may not be correct answers to many of the questions posed.* Differences of opinion are expected. Disagreements among students can be used as a learning tool. Student answers to the scenario discussion questions will represent a wide sampling of positions. By comparing and contrasting the differences in student opinion, the instructor should be able to illustrate the complexity of dealing with behavioral issues in the workplace.

**Epilogue**

One of the authors viewed the picture about the same time as management. Soon after the incident, the restaurant management suspended “Christopher” and released the following statement: “Nothing is more important than the safety of our customers and team members. We have strict food handling procedures and zero tolerance for any violations. As soon as we learned about the situation, we immediately investigated and found the photo was an ill-conceived prank and the food was never served to customers. We find this prank absolutely unacceptable and we plan to terminate anyone involved and will work with authorities to pursue legal action” (WANE TV, August 2, 2012).

Further, after an investigation by the local police department, the local Health Department determined that the photo was “an isolated incident” of food that was not offered for sale. “Christopher” explained the scenario on his Facebook page, which was captured by police, “I poked a hole in the top of a water bottle and filled it with really watered down mountain dew [*sic*]. I took the bottle and the [nachos] to the back utility sink and squeezed the bottle on to the [nachos], making it look like I was [urinating] on it. My manager was aware that it was not urine and it is all a joke.” (WANE TV, August 2, 2012).

The police indicated that if the explanation was accurate, “Christopher” would not face charges, however if the food was, in fact, urinated on and was served, the charge would be a Class D felony. If a customer ate the nachos and was afflicted with serious bodily injury, the charge would increase to a Class B Felony, which would result in a six to twenty year jail sentence (WANE TV, August 2, 2012).

A spokeswoman for the restaurant says “legal action could be forthcoming because of what they call defaming action toward the restaurant.” The local health department plans on delivering mandatory training to all employees at that location, “We are requiring mandatory education of all of their staff at some point in the near future where we can sit down with all of them and stress the importance of the general food safety practices and then some of these issues as to what the ramifications could be associated with those.” The restaurant says that the staff will be retrained, the facility will be deep-cleaned and it would be temporarily shut down to ensure the safety of its food (KTRE.com, August 10, 2012).

Subsequent news coverage illuminated the whole story surrounding the photo, which was originally contrived as an online entry to win a free t-shirt. The photo went viral and even resulted in “Christopher’s” appearance on Comedy Central’s Daily Show with Jon Stewart. Ultimately, he was fired from his restaurant job, but because he passed a lie detector test, the police investigation was dropped. “Christopher” never did receive a free t-shirt, but he did learn quite a bit about appropriate social media behavior, which he is applying to his business management studies at a local university. According to the January 24, 2014 WANE TV article, “When asked what he would do if one of his employees posted that picture, he said he would fire them on the spot.”

**Additional Pedagogical Materials**

The authors like to involve students in group learning projects as an open, participative discussion method is the most beneficial for meaningful student involvement. You may prefer to divide the class into small discussion groups of four to six participants; this forces individuals in the group to become more intensely involved in the case than they might otherwise be. Depending on the time limits, you may have each student prepare a written analysis of the scenario prior to group discussion. This requires each student to deal with the case and the discussion questions on an individual basis.

Role-Play Exercise: Select four students to play the roles: Justin Beckham, area supervisor; Melissa Black, TG store manager; Michael Reed, TG’s general counsel; and Ashley Norris, HR manager. Once students have been assigned these roles, they are to decide upon a plan of action to prepare for the unthinkable and develop a policy and procedure statement that could be used to handle the crisis successfully.

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(Note: The NLRB ruled to affirm an administrative law decision that the employees were improperly terminated based on the comments they posted on Facebook. They complained about their supervisor and other workplace concerns. “While it is one thing for companies to control closely content posted on their own Facebook and social media pages, it is another matter entirely for them to terminate employees based on protected speech on the employees’ Facebook pages.”)

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