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| Arbitration Case – “Proof of the Matter” |
| 4/9/2012 |
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**Question 1**

A. Management readily accepts the burden of proof in demonstrating just cause for the firing of Daniels for various important reasons. Firstly, because management is the entity bringing the charge in this case, logically they must also be the entity to bring about evidence to support the viability of this charge. For the company to invoke just cause in firing Daniels, they must present evidence of why they fired him; namely, evidence showing that he violated the company’s policy against being under the influence of drugs while working. Such evidence that they offered consisted of the flight attendant’s testimony to Daniels’ “laid-back” and “out of it” demeanor when working on the flight door and also the smell of marijuana in the bathroom, to name a few. Secondly, the principle of “management acts and union reacts” holds true. Management interrupted the status quo by acting to end Daniel’s employment. Therefore, they must explain why they “acted” to interrupt this status quo by offering evidence, and it is only up to the union to “react” by defending against their claims. Management so readily accepts this burden because if they want to bring a charge against Daniels to fire him, they must be prepared to show their reasoning behind it. They would not have fired him if they did not have relatively solid belief that he had violated company policy by being under the influence of drugs on the workplace.

B. It would have been in the best interests of management to try and establish that the union has the burden of proof in this case. The most substantiating reason for this is thus: the burden of proof really does act like a burden; it makes it harder for the entity possessing it to successfully prove their case. By placing it on the shoulders of the union, it would therefore be easier to management to win their case.

**Question 2**

A. There were a couple mistakes management made in the way they handled themselves on the day of the door-opening incident, namely in their heated interactions with Daniels. Daniels immediate supervisor got into an aggressive shouting match with Daniels, who yelled at Daniels to “calm down” and ordered him to go fix the broken lock on the plane’s door. While Daniels was in the break room, he received an angry call from his supervisor to hurry up. Such incidents only create a very tense and distrustful relationship between labor and management. If you give equal weight to both sides of the story of what happened on this day, the lack of trust between the parties still presents itself. Because of the way management acted, Daniels most likely felt cornered and angry, which may have led him to distraction and poor concentration when operating on the plane door. Management should not use such harsh language toward employees, as well as refraining from angrily ordering them around. Politeness and conciliatory speech should be emphasized.

B. Management should implement concrete measures to build trust between themselves and the employees. Reducing mistrust between parties is important as mistrust “can hamper communications between the parties” (Katz, et. al. 197). Daniels and management displayed high levels of distrust throughout their angry interactions with one another. The likelihood of the door opening would have been reduced had Daniels been given the adequate time he needed to fix the door. Instead, his supervisor kept forcefully insisting that he “hurry up” to fix the door, rushing Daniels without listening to his pleas for more time. Had they had more trust between one another, Daniels would have been able to communicate his need for more time successfully to the supervisor, who would have listened. Another step the supervisor could have taken to facilitate trust between himself and Daniels could have been, for example, instead of calling and angrily commanding Daniels to fix the door when Daniels was in the bathroom, the manager should have politely and calmly asked Daniels to resume work on the plane when he was done using the bathroom. This would have shown that management understands the needs of their employees, namely Daniels, who would have been more likely to place trust in them. Trust would have increased communication between the two, and Daniels would have likely been less distracted as he operated on the plane door, reducing the chance for malfunction.

**Question 3**

A. As mediator, I would utilize the process of (1) gaining acceptability, (2) probing for potential compromises, and (3) pushing to compromise in order to facilitate identification and acceptance of a mediated settlement. In the first stage of the process I will explore the issues between labor and management and build trust between us. In order to accurate diagnose the nature of the dispute between Daniels and Commuter Airlines, I would separately meet with each sides and take notes on all the events they felt happened the day of the incident, and reasons why (or why not) they believed Daniels to be under the influence of marijuana. To facilitate the initial movement towards a final resolution, I would require both Daniels and Commuter Airlines to acknowledge the mistakes that they both made on the day of the incident to one another. This would serve as a sign of solidarity and help break through their hesitance to move from their initial positions, which helps both parties move toward resolution.

In the second stage of the process occurs after I have ascertained the issue of both sides to be whether Daniels was truly under the influence of marijuana, and whether this hindered his ability to fix the door on the small plane and be subsequently fired. I would now probe to “identify the priorities and bottom-line positions” of both Daniels and Commuter Airlines. In order to do this, I would talk to Daniels and Commuter Airlines separately from one another and ask them what their proposed solution to the issue is. From their answer, I would gage their bottom-line positions and continue to go back and forth between Daniels and Commuter Airlines asking them to make more compromises. When I believe their bottom line positions are becoming closer, I would take a more assertive role and push for a compromise. This method works because I can get them to agree to a new compromise they would not have been as willing to take from the beginning.

In the final stage of the process I would become very aggressive and place both Daniels and Commuter Airlines in a single room to confront their situation and find a single solution. Having both parties talk to one another shows them the power each one has and will make them face reality. After that, I will aggressively push for a settlement and offer a proposal that I am sure both parties will agree too after having meet with them frequently to ascertain what they want. The method of becoming more aggressive works as a higher level of aggressiveness in the mediator makes mediation more effective.

B. If the parties asked me to recommend a particular settlement, I would recommend this: (1) Lee Daniels is to be reinstated with back pay, conditional on a 180 day drug-free period to subject to no more than 3 random and involuntary drug tests; and (2) Commuter Airlines agrees to implement progressive discipline in cases involving suspected drug use while working, namely, a written warning, involuntary drug test, and referral to supervisor on the first instance, 30-day suspension without pay on the second instance, and termination on the third.

My reasoning follows as such: for (1) I find that Commuter Airlines did not properly impose progressive discipline on Daniels because he was not disciplined for a supposed incident that happened a year ago, and was therefore not assisted by management and given the chance to properly correct his actions. For this he reason he must be reinstated and reimbursed for lost wages. For (2) I find that the company must begin to implement a practice of progressive discipline, and this framework allows for that. Progressive discipline is an important strategy in an organization as it helps ensure that the discipline imposed is appropriate, while also allowing a chance for the employee to recognize their mistake and correct their actions before facing termination.