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AN ANALYSIS OF ABSENTEEISM CASES TAKEN TO ARBITRATION: FACTORS USED BY ARBITRATORS IN THE DECISION-MAKING PROCESS

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Employee absenteeism drains billions of dollars each year from the American economy and is ranked by employers as their most serious discipline problem. The most common case taken to labor arbitration involves absenteeism.

The purpose of this study was to examine factors used by arbitrators in deciding the outcome of disciplinary labor arbitration cases involving excessive absenteeism. The seven key tests of just cause identified by Carroll Daugherty in the 1966 Enterprise Wire Co. arbitration case were used as the basis for examining the cases in this study.

One hundred and ninety-five absenteeism arbitration cases published by the Bureau of National Affairs and Commerce Clearing House between 1980 and 1990 were analyzed. The following two hypotheses were tested: (1) Meeting the seven key tests of just cause will increase the likelihood that management's decision in a discharge case for excessive absenteeism will be fully upheld, and (2) Partially meeting the seven key tests of just cause will increase the likelihood that the arbitrator will reach a split decision.

Four of Daugherty's key tests of just cause were found to be critical decision-making factors for the absenteeism cases analyzed. The four factors are penalty, equal treatment, proof, and notice. After logistic regression analysis of the data, it was determined that if all four of these critical factors are met by management, there is almost certain probability that management's decision in a discharge case for excessive absenteeism will be fully upheld. Meeting any of the critical factors increases the likelihood that a split decision will be reached by the arbitrator as opposed to the grievance being fully sustained.

Identifying the critical decision-making factors used by arbitrators in absenteeism discharge cases can be of value to management and labor in predicting with better assurance the cases in which each is likely to prevail.

TABLE OF CONTENTS

page

LIST OF TABLES v

Chapter

1. INTRODUCTION 1
   - Statement of the Problem
   - Purpose of the Study
   - Hypotheses
   - Methodology
   - Definition of Terms
   - Organization of the Study

2. LITERATURE REVIEW 8
   - Historical Background of Labor Arbitration
     - Labor Arbitration from 1865 to 1941
     - Labor Arbitration from 1941 to 1957
     - Labor Arbitration from 1957 to the Present
   - Grievance Procedure and Just Cause
   - Arbitral Decision-Making Process
   - Arbitral Decision-Making Studies
   - An Overview of Absenteeism
   - Measuring Employee Absenteeism
   - Theories of Absenteeism
     - Economic Theory
     - Psychological Theory
     - Sociological Theory
     - Jurisprudential Theory
     - Disability Theory
   - Steers and Rhodes Model
   - Dilts, Deitsch, and Paul Model
   - Causes of Absenteeism
     - Personal Factors
     - Organizational Factors
   - Attendance Control Policy
     - Establishing an Attendance Control Policy
     - Implementing an Attendance Control Policy
     - Administering and Attendance Control Policy

3. METHODOLOGY 64
Sources of Data
Data Collection
Dependent Variables
Independent Variables
Data Analysis
Limitations
Summary

4. RESEARCH FINDINGS 74
Factor Analysis and Canonical Analysis
Descriptive Data and Correlatin Matrix
Linear Probability Analysis
Logistic Regression Analysis

5. DISCUSSION AND CONCLUSIONS 85
Synopsis of the Study
Discussion of Findings
Implications for Further Study
Conclusion

APPENDIX 97

REFERENCE LIST 104

LIST OF TABLES

page

Table

1. Descriptive Data 78
2. Correlations Matrix 79
3. Weighted Least Squares Linear Regression for Company as Dependent Variable 80
4. Weighted Least Squares Linear Regression for Mixed as Dependent Variable 82
5. Logistic Regression for Company as Dependent Variable 84
6. Logistic Regression for Mixed as Dependent Variable 85
7. Eigenvalues--Simple Values 102
8. Normalized Factor Loading 102
9. Chi-Square Tests with Successive Roots Removed 102
10. Factor Structure for Dependent Variables 103
11. Variance Extracted from Dependent Variables 103

CHAPTER 1

INTRODUCTION

Arbitration is an integral part of self-government in industrial labor relationships. When disciplinary measures taken by management are disputed, arbitration is customarily established as the final step in the grievance process (Elkouri and Elkouri 1985, 6). Arbitration is a procedure in which labor and management voluntarily agree to be bound by the decision of an impartial person of their own mutual selection.

The type of case most commonly taken to arbitration involves discipline for absenteeism (Block and Mittenthal 1985, 77). Thus, this category of grievance could be expected to have well established principles which arbitrators could use in deciding cases. Block and Mittenthal, at the Thirty-Seventh Annual Meeting of the National Academy of Arbitrators, declared that such is not the case. According to Block and Mittenthal, absentee grievances confound arbitrators because of the extensive variety of situations and responses present and because of the "absence of any shared understanding of the conceptual issues which underlie so many absentee disputes" (Block and Mittenthal 1985, 77).

Employee absenteeism is a critical problem for much of American industry. On any given day, more than one million employed American

workers will not attend work (Klein 1986, 27). Approximately 2.3 percent of the workforce that is scheduled to report to work does not report for work each day because of illness, personal or family concerns, disability, or other reasons (U.S. Department of Labor 1989, 27). The total cost associated with absenteeism in the United States is estimated at $30 to $40 billion (Steers and Rhodes 1984, 233). Absenteeism is a pervasive and costly problem. According to the Bureau of National Affairs, managers rank absenteeism as their most serious discipline problem (Bureau of National Affairs 1985).

Little research has been conducted to explore the conceptual issues in grievance arbitration, examine the choices arbitrators must make, or understand the rationales behind the various choices. Attempts to understand the rationales arbitrators use in making their decisions are extremely limited. Few studies have empirically or statistically examined this issue. Leap and Stahl (1985) examined the decision criteria used by arbitrators in medically-based grievances. Researchers in two previous studies (Cain and Stahl 1983) and (Stahl and Cain 1981) used the policy capturing method for analyzing arbitral decisions. In examining the standards used in alcohol and drug cases, Crow (1989, 3) identified alcohol and drugs as an "insidiously pervasive problem in the workplace." Employee absenteeism is another real problem facing the workplace, and, therefore, warrants current study in an effort to gain insights into the application of the arbitral decision-making process.

Research including the examination of arbitral decision making in absentee cases is limited. Tobin (1976) reviewed 212 absenteeism cases that came to arbitration and found that, in most cases, excessive absenteeism was indisputable, and that arbitrators looked to the company absentee norm as a guideline for determining excessive absenteeism. Rosenthal (1978) examined twenty-nine absentee discharge cases to determine which conditions in company absentee plans led to the discharges being upheld by arbitrators. Scott and Taylor (1983) analyzed 146 absentee discharge cases in an attempt to identify factors having the greatest influence on arbitral decision making. Nonparametrical statistical analysis was used by Scott and Taylor to identify eight dominant factors used. No other studies were found which specifically examined the decision making process of arbitrators in absenteeism discharge cases. Since American business recognizes employee absenteeism as a pervasive and costly problem, and the most common arbitration case involves discipline for absenteeism, a current study of this subject is needed.

Statement of the Problem

This study concerned the determination factors which are used by arbitrators in disciplinary labor arbitration cases involving absenteeism. Arbitration is less costly and time consuming than settling management and labor disagreements through the courts. However, arbitration is not without its costs in dollars, man hours, and negative effects on the relationship

between management and labor in the workplace. Therefore, the ability to recognize factors that affect the outcome of discharge cases for excessive absenteeism would be valuable for management and labor. The just cause doctrine is a well established basis used by arbitrators in determining the disposition of discharges in grievance arbitration. Daugherty (1966) identifies seven key tests of just cause which arbitrators may use in the decision-making process of discharge cases. Arbitrators in the decision-making process may consider various factors and criteria that are deemed significant in deciding absenteeism cases.

Purpose of the Study

The purpose of this study was to identify the factors which arbitrators rely on in making decisions in absenteeism discharge cases. This study will help management and labor predict the possible outcomes of grievances taken to arbitration. Both sides can examine the factors of the case and better determine how the arbitrator will view those factors. If management and labor can better understand how the arbitrator views specific factors in the case, and can better understand how these factors affect the ultimate arbitral decision and award, management and labor can predict with better assurance those cases in which each would prevail.

Hypotheses

The following hypotheses are tested in this study:

Hypothesis One. Meeting the seven key tests of just cause will increase the likelihood that management's decision in a discharge case for excessive absenteeism will be fully upheld.

Hypothesis Two. Partially meeting the seven key tests of just cause will increase the likelihood that the arbitrator will reach a split decision in a discharge case for excessive absenteeism.

Methodology

Published arbitration cases dealing with excessive absenteeism were analyzed for this study. The criteria arbitrators use in decision-making in the cases studied were recorded and compared with Daughtery's seven key tests used to establish just cause. The data were analyzed using logistic regression.

Definition of Terms

Absenteeism is an individual's unavailability for work when work is available for the individual.

Arbitration is the process used to settle grievance issues arising from interpretation or application of the collective bargaining agreement by which the two parties in the dispute agree to abide by the decision of an independent arbitrator.

Arbitrator is the person who has been given the authority to resolve a dispute between parties.

Award is the decision of an arbitrator in a dispute.

Collective bargaining agreement is the employment contract in effect between labor and management describing the rights and duties of each party.

Contract is the collective bargaining agreement.

Decision making is the process by which determinants are considered, evaluated, and applied in reaching a conclusion.

Just cause describes proper or sufficient reasons for discipline or discharge measures imposed on labor by management. The following are the seven key tests used to determine just cause: proper notification of rules and consequences, reasonableness of management's action, proper investigation, fair investigation, proof of misconduct, equal treatment, and appropriateness of the penalty.

Opinion is a written document in which the arbitrator sets forth the reason for the award.

Policy capturing is the process of examining the standards used by arbitrators in making decisions.

Organization of the Study

The major focus of this study concerns an analysis of the decision-making process used in arbitration discharge cases involving absenteeism.

In Chapter 2 a review of the literature on arbitral decision-making and absenteeism is presented. This review includes an examination of the decision-making process of arbitrators, the role of arbitration in the disposition of absenteeism cases, and workplace absenteeism. The research methodology including the sources of data, data collection, measurement of the data, statistical data analysis, and limitations are presented in Chapter 3. Research findings of the study are presented in Chapter 4. Chapter 5 contains the summary and conclusions of the study including implications and recommendations.

CHAPTER 2

LITERATURE REVIEW

The role of arbitration in settling labor/management grievances, the application of just cause in the grievance procedure, and the process arbitrators undertake in order to make decisions in disciplinary cases are examined in this chapter. Previous studies which have examined the arbitral decision-making process are included.

The rationales behind the choices arbitrators make in discharge cases for excessive absenteeism are examined in this study. In order to better understand the role of an arbitrator in making decisions pertaining to excessive absenteeism in the workplace, studies on absenteeism are also included. Many attempts have been made to understand the possible causes of employee absenteeism. Descriptive models have been developed in an attempt to provide insight into the problem. And yet, the principles used by arbitrators to decide discharge cases for excessive absenteeism have not been extensively analyzed. Therefore, an examination of the nature, causes, and effects of absenteeism in the workplace are included in this chapter in an effort to better understand the decisions of arbitrators in absenteeism cases.

Historical Background of Labor Arbitration

It is important to understand the nature of arbitration and its contribution to the relationship between labor and management. In the private sector, arbitration is a substitute for economic warfare. With arbitration, strikes and lockouts are avoided and, thus, economic advancement is encouraged.

In arbitration, the parties to a dispute voluntarily agree to be bound by the decision of an impartial person of their own mutual selection. This impartial person, the arbitrator, is expected to make a decision based on the merits of the case. Evidence and arguments presented by both parties are presented at a hearing (Coulson 1988; Elkouri and Elkouri 1985).

Labor arbitration, then, is "simply the arbitration of a dispute between an employer and the union representing the employees involving some aspect of the employment relationship" (Nolan 1979, 2). Two different kinds of disputes are covered by the term labor arbitration. The first, interest arbitration, involves disagreements over the provisions to be included in a collective bargaining agreement. An interest arbitrator facilitates the collective bargaining process by making a decision for both the employer and the union after efforts to reach agreement through their own efforts have failed. The second, grievance or rights arbitration, involves disagreements over the meaning or application of terms in the collective bargaining agreement (Elkouri and Elkouri 1985; Nolan 1979).

The history of arbitration, or the settlement of disputes, can be traced back through many periods of history. Some have called arbitration the oldest known method for the settlement of disputes. There is evidence that it was used more than 3,500 years ago in Egypt, in the ninth century B.C. in Greece, and by King Solomon in the Biblical period (Elkouri and Elkouri 1985; Trotta 1974; Updegraff 1970).

As labor disputes increased in frequency in more recent times, arbitration was suggested as a remedy. The history of labor arbitration in America falls into three distinct periods. The first period extends from 1865 until 1941, the second from 1941 until 1957, and the third from 1957 until the present. Major events and decisions define these three periods (Fleming 1965, 1-30).

Arbitration from 1865 to 1941

The Pittsburgh Boilers case in 1865 is identified as the first instance of labor arbitration used in the United States. The iron puddlers of Pittsburgh arbitrated wages and arrived at a collective agreement through arbitration. In the earliest references to arbitration, the term did not mean adjudication by an impartial third party but referred to a negotiation (Fleming 1965, 1; Trotta 1974, 13).

By the late 1880s arbitration was supported by the labor organizations and general public as a means to settle serious labor disputes. By 1900 seventeen states had laws authorizing the courts to appoint local

boards of arbitration. Labor and management in certain industries set up joint boards to settle disputes (Fleming 1965, 3; Nolan 1979, 3; Trotta 1974, 16).

Arbitration was furthered during this period by early federal legislation. The Arbitration Act of 1888 was passed by Congress to encourage voluntary arbitration of labor disputes in the railroad industry. The Erdman Act of 1898 also provided for mediation and voluntary arbitration through a three-party arbitration board. The Newlands Act of 1913, the Adamson Act of 1916, the Railway Labor Act of 1926, and the Wagner Act of 1935 were federal attempts to substantially improve the settlement of labor disputes (Fleming 1965; LaCugna 1988; Nolan 1979; Trotta 1974).

Labor Arbitration from 1941 to 1957

Labor/management turmoil and strikes increased during the early 1900s but could no longer be tolerated once the nation entered World War II. President Roosevelt's suggestion for a no-strike, no-lockout agreement and a tripartite National War Labor Board was accepted. The board assumed jurisdiction over labor disputes which threatened to interrupt work that contributed to the war effort (Fleming 1965, 14-21; Trotta 1974, 17-21). The future of arbitration was essentially established during this period.

> In retrospect it is clear that World War II did three things insofar as voluntary arbitration is concerned. First of all, it encouraged widespread adoption of arbitration techniques.

> Second, it sharpened the distinction between arbitration over "rights" and "interests." Henceforth, it would be clear that the commitment of the parties was to grievance arbitration. . . . Finally, the War Labor Board served as a training ground for the men who subsequently served as arbitrators. After 1945 grievance arbitration was firmly established. The debate was no longer whether an arbitration clause should be included in the contract, but was concerned solely with mechanics (Fleming 1965, 19).

The Labor Management Relations Act of 1947, commonly known as the Taft-Hartley Act, was enacted to deal with economic and political unrest following World War II. Provisions in this act had a favorable impact on grievance arbitration. Section 203 of the act favored and established a national policy of voluntary settlement for private disputes by declaring that final adjustment by a method agreed upon by the parties is the most desirable way to settle disputes over the interpretation and application of collective agreements. Section 301 of the act authorized suits in federal courts for violation of contracts between an employer and a labor organization representing employees in industries affecting interstate commerce (Elkouri and Elkouri 1985, 26; LaCugna 1988, 8-9; Nolan 1979, 42).

Labor Arbitration from 1957 to the Present

After enactment of Section 301, there was considerable disagreement over how this section should be applied. In the Textile Workers Union v. Lincoln Mills case of 1957, the U.S. Supreme Court ruled that Section 301 authorized the federal courts to fashion a body of federal law for the

enforcement of collective agreement provisions for arbitration. It declared that

> the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expressed a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way (Textile Workers Union v. Lincoln Mills 1957, 455).

In 1960 the United States Supreme Court decided three cases popularly known as the "Steelworkers' Trilogy" (United Steelworkers v. Enterprise Wheel and Car Co., United Steelworkers v. Warrior & Gulf Navigation Co., and United Steelworkers v. American Manufacturing Co.), which addressed the relationship between arbitral and judicial processes. The trilogy cases strengthened the view that arbitration of labor disputes should be encouraged and that the decisional authority of arbitrators should not be weakened or overturned by judges when questions of arbitrability were taken into the courts.

In United Steelworkers v. Enterprise Wheel and Car Co. (1960) the Supreme Court upheld the arbitrator's authority to remedy violations of collective bargaining agreements. In United Steelworkers v. Warrior & Gulf Navigation Co. (1960) and United Steelworkers of America v. American Manufacturing Co. (1960) the Supreme Court declared that arbitration was the desired means of solving industrial strife. It held that disputes over arbitrability, the question of whether the contract required the parties to

arbitrate a given issue, should be resolved in favor of arbitration unless it was shown with positive assurance that the parties intentionally excluded the issue from the contract. These three cases greatly enhanced the power of labor arbitration (Coulson 1988, 116; Elkouri and Elkouri 1985, 27-32).

Arbitration is an integral part of self-government by the labor environment. The use of arbitration instead of litigation saves time, expense, and trouble. Almost 96 percent of the collective bargaining agreements in the nation's important industries provide for arbitration as the terminal point of the grievance machinery (Elkouri and Elkouri 1985, 6). The following section focuses on arbitration in the grievance procedure and the concept of just cause.

Grievance Procedure and Just Cause

The majority of cases that come to arbitration do so because of challenges to the employer's handling of discipline or discharge in the employment setting. It is expected by both labor and management that the employer has the right to expect certain standards of conduct from the employee and that the employee has the right to expect fair and equal distribution of justice. Prior to collective bargaining agreements, employers were free to discipline or discharge employees almost at will. Now more than 95 percent of all collective bargaining contracts provide for grievance and arbitration procedures as a means of permitting continued operation of

the organization (no strikes or lockouts) while disputes are settled (Elkouri and Elkouri 1985, 153; Zack 1989, 58).

The grievance procedure usually consists of a series of steps to be taken by the parties toward the aim of resolving the point of conflict. Grievances may arise from many situations in the work setting. Many disputes involve the interpretation or application of provisions in the collective bargaining agreement. The employee, with or without union representation, proceeds through successive steps of the management hierarchy if the dispute cannot be resolved until arbitration is reached. Arbitration generally is the last step or terminal point of dispute under union contracts. When disputes cannot be settled between the two parties, arbitration offers access to a mutually-selected neutral party to resolve them (Elkouri and Elkouri 1985).

A recent survey by the Bureau of National Affairs (1979, 6) indicates that clauses concerning discharge and discipline are included in 96 percent of all collective bargaining agreements, and, that discipline and discharge cases represent the largest single category of cases brought before arbitrators. The Federal Mediation and Conciliation Service (1976, 55-56) reports that one of every three grievances decided by arbitrators is in the discipline and discharge category.

Usually, labor and management do not negotiate specific standards concerning what conduct is or is not subject to discipline or what penalties

would apply in each particular case. However, the standard of just cause has come to be accepted as the determinant of the appropriateness of disciplinary action for the parties (Zack 1989, 57). The Bureau of National Affairs reports that cause or just cause is the provision found to be established as grounds for discharge in 80 percent of the collective bargaining agreements examined (Bureau of National Affairs 1979, 6).

Even if a just cause limitation is not specifically spelled out in the collective bargaining agreement, many arbitrators consider it to be implied. According to Arbitrator Boles, "a 'just cause' basis for consideration of disciplinary action is, absent a clear proviso to the contrary, implied in a modern collective bargaining agreement" (Boles 1955, 301). Some arbitrators have held that even where no collective bargaining agreement relationship existed an "obligation on the employer is that an employee shall not be dismissed without cause" (Rogers 1946, 817).

McGoldrick (1955, 6-7) found no significant difference between the phrases just cause, cause, justifiable cause, proper cause, and obvious cause. These terms are meant to exclude discharge by management for capricious, whimsical, or erratic reasons. McGoldrick states these terms also constitute the duties owed by employees to management and by management to the employees. "They include such duties as honesty, punctuality, sobriety, or, conversely, the right to discharge for theft, repeated absence or lateness,

destruction of company property, brawling and the like" (McGoldrick 1955, p. 6-7).

The just cause standard has become recognized by many as the universal rule for measuring the appropriateness of discipline and the disciplinary penalty (Zack 1989, 57). However, a definition of just cause is not as universally accepted. No standards exist for defining just cause (Trotta 1974, 236). Platt discussed this problem in one of his early cases,

> To be sure, no standards exist to aid an arbitrator in finding a conclusive answer to such a question and, therefore, perhaps the best he can do is to decide what reasonable man, mindful of the habits and customs of industrial life and of the standards of justice and fair dealing prevalent in the community, ought to have done under similar circumstances and in that light to decide whether the conduct of the discharged employee was defensive and the disciplinary penalty just (Platt 1947, 767).

A review of published arbitration cases reveals a set of guidelines that are utilized by arbitrators in defining just cause. The following quotations offer insight into arbitrators' thought processes concerning the nature of just cause:

> Although the contract is silent on the criteria to be utilized in measuring the imposed discipline, just cause is not an ambiguous, amorphous concept. Tens of thousands of arbitration decisions have explicated standards by which to evaluate the degree of justifiable discipline (Ross 1973, 791).

> The question of "just cause" is nothing more than the question of justice, placed in an industrial setting. True, it is not legal justice,; it is not social justice--it is industrial justice (McBreaty 1974, 1160).

> (Just cause) excludes discharge for mere whim or caprice . . . .
> (It is) intended to include those things for which employees

> have traditionally been fired . . . . (It) includes the traditional cause of discharge in the particular trade or industry, the practices which develop in the day-to-day relations of management and labor and most recently . . . includes the courts and arbitrators(McGoldrick 1955, 6-7).

No two arbitration cases are exactly alike. Each case involves many factors which must be considered and evaluated by the arbitrator before making a determination. Trotta (1974, 237) identifies some of these factors: (1) Degree of severity of the offense, (2) Length of service with the company, (3) Provocation, if any, that may have led to the offense, (4) The number of previous offenses, (5) The nature of the previous offenses, (6) Previous warnings or other disciplinary action for previous offenses, (7) Company rules: Are they clear? Are they reasonable? Have they been communicated by the employer?, (8) Have company rules and regulations been consistently applied?, (9) Past disciplinary actions for similar offenses by other employees, (10) Employee's pattern of conduct, (11) Supervisory practices, and (12) Is the penalty reasonable and appropriate to the offense?

Despite the uncertainty of quantifying just cause, Zack (1989) identifies it as the benchmark for maintaining discipline within an enterprise. Specific factors are identified as offering means to determine equity and due process in both procedural and substantive aspects of disciplinary actions. Specific factors include: (1) establishment and notification of disciplinary rules, (2) uniformity of application of discipline, (3) relevance of rules to the maintenance of an efficient and tranquil

workplace, (4) appropriate escalation of discipline for repeated inappropriate behaviors, (5) progressive, corrective discipline, (6) conformity to the rules and procedures established, and (7) timeliness of the discipline (Zack 1989, 57).

In an examination of the standards that have been applied by arbitrators in discharge or disciplinary cases, Elkouri and Elkouri assessed the following factors as relevant in determining penalties for misconduct: (1) seriousness and nature of the offense, (2) procedural fairness and due process, (3) use of facts determined after discharge, (4) grievant's past record, (5) length of service with the company, (5) knowledge of rules, (6) use of warnings unless offense is legally or morally wrong, (7) lax enforcement of rules, (8) unequal or discriminatory treatment, and (9) management's responsibility for grievant's action (Elkouri and Elkouri 1985, 670-688).

Arbitrator Bentley suggested that the following factors be considered as guidelines for determining just cause. These factors are identified as well accepted determinants of just cause in disciplinary cases.

1. The employer should enjoy reasonable discretionary powers to prescribe rules of conduct.

2. The employer should publicize these rules either by direct publication or by consistent enforcement.

3. The employer should apply his disciplinary policies "seriously and without discrimination."

4. The employer should regard industrial discipline as corrective--not punitive.

5. The employer should avoid arbitrary or hasty action when confronted with a situation.

6. The employer should evaluate each situation in the light of the employee's disciplinary record.

7. The employer should tailor the punishment to fit the crime (Bentley 1967, 339).

Still another arbitrator listed criteria to be generally applied in evaluating just cause for discipline. Arbitrator Kerrison identified these factors as essential if discipline is to be upheld: (1) equal treatment--all employees judged by same standards, (2) rule of reason--employee rights maintained, (3) internal consistency--established pattern of discipline, and (4) personal guilt--individual records may be considered (Kerrison 1967, 1105).

Although no uniform definition of just cause exists, perhaps the best and most often quoted statement of the criteria used is that by Arbitrator Carroll Daugherty (Hill and Sinicropi 1981, 41; McPherson 1987, 387). Daugherty's criteria, as expressed in the 1966 decision in Enterprise Wire Co., outline the basic seven tests as follows:

> 1. Did the company give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct? . . .
>
> 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 that the company might properly expect of the employee? . . .
>
> 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 order of management? . . .
>
> 4. Was the company's investigation conducted fairly and objectively? . . .
>
> 5. At the investigation did the "judge" obtain substantial evidence of proof that the employee was guilty as charged? . . .
>
> 6. Has the company applied its rules, orders and penalties even-handedly and without discrimination to all employees? . . .
>
> 7. Was the degree of discipline in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company (Daugherty 1966, 362-365)? . . .

Arbitrator Daugherty indicates that a "no" answer to one or more of the seven test questions normally signifies that just and proper cause did not exist in a discipline case.

McPherson identifies Daugherty's contribution to the evolving concept of just cause as having lasting impact on both arbitral thinking and the actual conduct of the parties.

> In more than two decades . . ., he has been portrayed in virtually every standard reference as a major, if not the foremost, expositor of just cause . . . . No advocate making even a cursory effort to research the meaning of just cause could miss the seven tests, nor could any instructor searching

> for teaching materials. An arbitrator who wished to apply a recognized set of just cause principles to the facts of a given case could find no more comprehensive, incisive, or widely available interpretation of the meaning of just cause. Even a cursory review of published awards confirms the frequency of their use, albeit often without mention of the source (McPherson 1987, 390).

McPherson (1987, 389) classifies the "most convincing evidence of Daugherty's pervasive presence in the reference literature" as the work by arbitrators Adolph Koven and Susan L. Smith (1985). Koven and Smith (1985) use Daugherty's tests as the model for analyzing just cause questions in all discipline issues.

In their work, Just Cause: The Seven Tests, Koven and Smith acknowledge

> a perennial problem intrinsic to all misconduct cases is to establish firmly that the discipline or discharge took place for just cause. To many supervisors, what constitutes "just cause" is a general and elusive concept; to many union representatives, challenging disciplinary action is often a makeshift affair without any theory or plan. This book offers a systematic approach to just cause based on seven key tests . . . (Koven and Smith 1985, xv).

Koven and Smith recognize that the just cause standard is a difficult concept to pin down and that it really involves the following elements: (1) authority--Whose standards will determine whether a particular discharge was for just cause? (2) scope--What elements i.e., proof of misconduct, propriety of the penalty, are taken into account in measuring just cause? (3) due process--Was a fair investigation and hearing held? and

(4) equities--Was the "spirit" rather than the "letter" of the standard emphasized (Koven and Smith 1985, 8)?

Koven and Smith do not view just cause as a rigid set of rules. Rather, they express, it is a process of applying the seven tests to each particular collective bargaining relationship. The seven factors to be examined by the arbitrator and tested are (1) notice, (2) reasonable rules and orders, (3) investigation, (4) fair investigation, (5) proof, (6) equal treatment, (7) penalty (Koven and Smith, 1985, 10).

Koven and Smith (1985) offer an elaborate examination of Daugherty's seven key tests of just cause. An explanation and review of each is PROVEDED. Possible, as well as probable, pitfalls and applications of each test are included. Koven and Smith offer a meaningful framework for understanding and classifying decisional cues used by arbitrators in applying the concept of just cause. The following section examines arbitral decision-making and includes a review of studies which have analyzed factors used by arbitrators in deciding cases.

Arbitral Decision-Making Process

Arbitration first received status as a means of labor dispute settlement during World War II. Increasingly, decisions made to resolve workplace grievances are made by arbitrators. The bases for the authority and the decision-making process of the arbitrator are derived from the Steelworkers Trilogy.

In United Steelworkers v. American Manufacturing Company, a dispute arose concerning the reinstatement of an employee who had been disabled. The dispute went unresolved, and the union requested arbitration. The employer refused to arbitrate; therefore, the union sued in federal court to compel arbitration of the dispute. The lower court upheld the employer on the grounds that the employee had accepted a settlement on the basis of his permanent partial disability, which usurped his claim to seniority or employment rights. The court of appeals affirmed, holding that the grievance was frivolous and baseless. The Supreme Court defined the role the federal courts should assume when called upon to enforce an agreement to arbitrate.

> The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it is his judgment and all that it connotes that he bargained for.
>
> The courts therefore have no business weighing the merits of the grievance considering whether there is equity in a particular claim . . . . (United Steelworkers v. American Manufacturing Co. 1960, 568).

The Supreme Court in this decision resolved that the courts should not inject themselves into the merits of a dispute nor deny arbitration when the parties have agreed to arbitration for grievance settlement.

In the Warrior and Gulf case, the Supreme Court clearly favored arbitration of labor disputes as a substitute for industrial strife. The court

defined arbitration as the means of solving the unforeseeable by molding a system of private law for all the problems which management and labor may experience. Unless the collective bargaining agreement specifically excludes a matter, the disagreement falls within the grievance and arbitration provisions (United Steelworkers v. Warrior and Gulf Navigation Co. 1960, 585).

The Supreme Court in this case also defined the arbitrator's functions and powers.

> The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law--the practices of the industry and the shop--is equally a part of the collective bargaining agreement although not expressed in it. The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment. The parties expect that his judgment of a particular grievance will reflect not only what the contract says, but insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, his judgment whether tension will be heightened or diminished (United Steelworkers v. Warrior and Gulf Navigation Co. 1960, 582).

The Supreme Court determined in Warrior and Gulf Navigation and in the Enterprise Wire case that the arbitrator may look for guidance in making decisions from many sources.

> When the arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what

> specific remedy should be awarded to meet a particular contingency (United Steelworkers v. Enterprise Wheel and Car Corporation 1960, 597).

However, the court also indicated where the arbitrator must look for the underlying guidance in making decisions. The arbitrator must look to the collective bargaining agreement as the primary source for dispute resolution.

> Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award (United Steelworkers v. Enterprise Wheel and Car Corporation 1960, 597).

The Supreme Court in the Trilogy cases determined that the arbitrator could look to many sources as long as the decision drew its essence from the collective bargaining agreement. The issue is to determine what standards, principles, or cues the arbitrator uses in this decision-making process.

Arbitral Decision-Making Studies

A number of researchers have examined and discussed the decision-making process of arbitrators. The Thirty-Third Annual Meeting of the National Academy of Arbitrators addressed the decisional thinking of arbitrators. The issue of arbitral decision-making was examined by panels from Chicago, Washington, New York, and the West Coast. It was

determined that this matter has been debated by scholars and practitioners for years, and yet no specific and agreed upon answer has emerged (Stern and Dennis 1981).

Abrams (1981) believes the overwhelming acceptance of the arbitration process without governmental compulsion is due to the principled approach arbitrators' use in reaching decisions. The arbitrator goes about the decision-making process in a way which the parties contemplated when they agreed to arbitration in the collective bargaining agreement. Fleming (1961) also concludes that the concern of arbitrators with due process is an indication of the realistic concepts upon which industrial arbitration is based.

Davey (1972) interviewed forty-three arbitrators in order to examine the procedures by which arbitrators reach their conclusions. Davey found that there was no one correct way to approach decision-making for arbitrators. But he concluded that "all know that the contract is their master" (Davey 1972, 286).

Custom and past practice constitute a factor used by arbitrators in decision-making (Aaron 1978, 536; Elkouri and Elkouri 1985, 437). Wallen (Landis 1977, 64-67) evaluated and assessed the validity of using past practice as a decisional standard. Wallen determined that the use of custom and past practice was valid when the practice stemmed from some mutual

acceptance or agreement by the parties and when the past practice did not overrule or give different meaning to the written contract language.

Although arbitrators may vary with regard to the factors and criteria they deem significant in deciding a case, a number of basic principles are generally be considered to be important. Dworkin (1974, 201) cites the common law of the shop as a significant factor. The common law of the shop includes the contemporary standards within the industrial community and the past practice and understandings of the parties. Arbitrators, Dworkin (1974, 201) states, must be mindful of the context within which any particular dispute arises.

Arbitrators may turn to prior arbitration awards for insight into the decision-making process. However, the use of prior arbitration awards has been considered a controversial standard (Gray 1951, 135). Jennings and Martin (1978) examined 275 published arbitration cases to determine the influence prior arbitration awards had on arbitral decision-making. They found a lack of significant association between prior arbitration awards and arbitral decisions. Arbitrators gave no weight or negative weight to the awards presented. Decisions were based on the customary practice of the organization and contractual language. Gullett and Goff (1980) examined the cues or generally accepted principles used by arbitrators in settling union-management disputes. The predominant cue used in decision-making was found to be the clear and unambiguous contract language. The only

exception to the use of this cue as the primary factor was the "a, c and d rule." Management cannot violate the contract for a long time and then suddenly reverse itself in a manner which is considered "arbitrary, capricious, or discriminatory" (Woolf 1978, 72). While contract language was found by Gullet and Goff (1980) to be the predominant cue, other significant cues found to be used by arbitrators were past practice, precontract negotiations, past rulings, and the common law of the shop.

An examination of discharge cases from 1956 to 1960 was conducted by Teele (1962) in which he classified three dominant decision cues used by arbitrators. These cues used by arbitrators were (1) the contract and local practice, (2) general practice (the common law of the shop) or precedent, and (3) personal standards or judgments of the arbitrator. Teele concluded from his study that arbitrators turn to personal standards when reliance on contract and local practice or general practice and precedent fail to provide all the cues required by the arbitrator to reach a decision.

Drotning and Fortado (1984) analyzed the decision-making process of arbitrators in order to suggest an analytical framework that would contribute to this process. The decision tree analysis proposed recognizes that arbitrators' decisions involve the objective assessment of evidence as well as the subjective sense and feeling of the case.

In 1987 a nationwide survey of National Academy of Arbitrators members established that arbitrators assess differing weights to decision-

making criteria (Allen and Jennings 1988). The arbitrators studied ranked the following factors in order of importance from most to least critical: (1) contract language, (2) past practice, (3) personal judgment of fairness or justice, (4) impact on future labor relations, and (5) precedent and industry practice.

Leap, Srb, and Peterson (1986) analyzed arbitral decisions in sixty-five published cases involving the issue of health and job safety. They endeavored to capture the factors and logic used by arbitrators in deciding health and job safety issue cases. Arbitrators in the cases studied were found to have little contractual guidance, sparse case precedent, and much conflicting medical opinion. The following factors were found to be significant cues used by arbitrators in their analysis and decision-making process: (1) medical factors--impairment, treatment; (2) grievant factors--attitude, history, personal characteristics; (3) job factors--effort, stress, hazards, risk; and (4) legal and contractual factors--OSHA, workers' compensation, liability, contractual provisions.

Leap and Stahl (1985) analyzed 144 published medically-based arbitration cases and identified ten factors commonly used by arbitrators in decision-making. They found that an employee's work record and seniority had the most effect on the outcome of the case.

Since the passage of the Federal Age Discrimination in Employment Act of 1967 and the Civil Rights Act of 1964, arbitrators have been hearing

age discrimination grievances. Wrong (1988) analyzed age discrimination arbitration awards. An examination of these awards revealed the following significant factors: (1) the contract, (2) current industrial practice, (3) legal knowledge of the arbitrator, (4) observance of the law, (5) awareness of other arbitrators' awards, and (6) the arbitrators' views on age issues.

Jennings and Wolters (1976) reviewed discharge decisions in order to analyze the similarities and differences in arbitration awards in two time periods. The arbitral disposition of discharge grievances showed little change from the 1950s to the 1970s. They also categorized the considerations explicitly cited by arbitrators in their decisions. The following decision factors or cues were most often cited in the 1970s cases: (1) violation of contract--62 percent, (2) prior work record of grievant--42 percent, (3) burden of proof--39 percent, (4) arbitrary, capricious, or discriminatory action--32 percent, and prior arbitration awards--30 percent.

Jennings, Sheffield, and Wolters (1987) continued this line of research in a more recent study. The following considerations were cited as being most often employed by arbitrators in the 1980s discharge grievances examined: (1) motivation or reasoning behind management/grievance actions--63 percent, (2) prior work record of grievant--50 percent, (3) burden of proof--47 percent, (4) relationship of penalty to offense--45 percent,

(5) credibility of the witness/evidence--44 percent, and (6) violation of contract--44 percent. Just cause and burden of proof standards were found as the predominant decision cues used by arbitrators.

Most sexual harassment grievances arrive as just cause cases because the grievance is filed by the disciplined alleged harasser rather than the alleged victim. In a review of such cases, Monat and Gomez (1986) found that arbitrators routinely upheld discharge for sexual harassment while requiring that evidence be convincing and substantial.

In an examination of forty post-1960 drug discharge and suspension cases, Wynns (1979) analyzed the standards used by arbitrators. Burden of proof, beyond the standard of a preponderance of the evidence, was considered most important. Once the burden of proof was sustained, arbitrators considered a number of other factors in determining whether the discharge was fair. Arbitrators looked for the existence of a plant rule or contract language which prohibited the conduct. Other factors considered were the employee's work and disciplinary record, the type of drug involved, adverse effects the misconduct had on the company, and the severity of the offense.

Crow (1989) examined drug and alcohol cases and determined that arbitrators consistently relied on specific criteria when making awards. Proof of misconduct was found to be the dominant cue used by arbitrators in the cases studied.

In a nonquantitative study, Gross and Greenfield (1985) examined 584 reported arbitration decisions involving health and safety disputes from 1945 to 1984. The authors maintain that arbitral value judgments which determine the weighting of
decision cues focus on management rights rather than workers' rights.

Dilts and Deitsch (1989) examined the issue placed before the arbitrator and the decision rendered by the arbitrator in 1,000 arbitration awards in order to evaluate the neutrality of the arbitrators. They determined that the burden of proof had a significant impact on arbitral decision-making.

An analysis of the manner and the basis upon which arbitrators decide discipline and discharge cases involving employee theft was undertaken by Garbutt and Stallworth (1989). Their discussion focused on the burden of proof necessary to sustain discharge and the existence of a clear-cut company policy which specifies acceptable and unacceptable behavior. It was found that arbitrators were more likely to reverse discharges if there was insufficient evidence or an unclear or inconsistent application of rules.

Two studies have examined the effect of gender on arbitration decisions. Bemmels (1988) presented evidence that in some respects arbitrators treated women statistically more leniently than men in discipline

grievances. Scott and Shadoan (1989), however, found that the arbitration decision-making process was free of gender bias.

Some studies have attempted to investigate the arbitrators' personal characteristics as factors in the decision-making process. In a study by Nelson and Curry (1981), it was found that the age and experience of the arbitrators did significantly impact arbitral decisions. Arbitrators with little or no experience were found to be more likely to reinstate the grievant. A statistically significant difference was also found between the mean age of those reinstating the grievant and those upholding the discharge. Older arbitrators were more likely to uphold discharges.

Greenberg and Harris (1981) examined arbitrator's employment status as a factor in the decision-making process. Full-time arbitrators rendered a higher proportion of split decisions and a lower proportion of denied decisions than did part-time arbitrators. In an analysis of arbitrator characteristics and their effects on decision-making in discharge cases, Deitsch and Dilts (1989) found no bias on decisions based on training or education.

Stahl and Cain (1981) examined the possibility of using a policy-capturing model to predict the award decisions of arbitrators. Three criteria or factors were examined: efficiency (management rights), stability (clear language of the contract and past practice), and equity (fairness and effect on the worker). Award decisions were found to be predictive to a degree

based on the three criteria. The most significant finding was that individual decision makers were more consistent in the application of their individual policies than were groups of decision makers in the application of the predictive model.

In a later study, Cain and Stahl (1983) examined the use of seven decision cues by arbitrators in making decisions. The following seven cues were used: (1) management rights and efficiency, (2) clear contract language, (3) past practice, (4) fairness, (5) effect on the worker, (6) negotiating history of management/labor, and (7) prior arbitration awards. The awards for three arbitrators were analyzed in Cain and Stahl's study and findings held that each arbitrator was highly internally consistent in the application of these cues.

Absenteeism is a critical problem for much of American business and industry. Excessive absenteeism is recognized by management as cause for discharge, and the majority of arbitration cases are for discipline and discharge. Examination of the use of decision cues in arbitral decision-making in absenteeism cases has been addressed in two previous studies. Three previous studies have addressed this problem.

Tobin (1976) examined 212 absenteeism cases that came to arbitration. Excessive absenteeism as the cause for discipline or discharge was indisputable in most cases. The test for excessive absenteeism was

whether the employee's absenteeism had risen above the acceptable range for the company involved.

Tobin (1976) found that arbitrators used the following decision cues as the deciding factors in absenteeism cases: (1) just case criteria, (2) absence patterns, (3) employee assistance programs, (4) length of service, (5) absence validity, and (6) evidence of rehabilitation. Tobin determined that arbitrators examine the whole picture in each situation to determine whether discharge is warranted.

In a 1979 study, Rosenthal concluded that the extent of due process required by arbitrators before discharge was upheld had increased in the previous decade. Companies must devise programs which reduce absenteeism and meet the just cause standard accepted by arbitrators. Rosenthal stated, "Companies seeking in the future to discharge employees for excessive absenteeism must meet these more formalized arbitral standards" (Rosenthal 1979, 733).

Rosenthal (1979) identified the following criteria as those used by arbitrators in deciding absenteeism cases: (1) reasonableness of rules, (2) investigation, (3) publication of rules, (4) accurate and complete records, (5) progressive discipline, (6) consistency, (7) length of employment, (8) degree of culpability. Length of employment and degree of culpability the least frequently mentioned criteria used by arbitrators in deciding the cases.

This chapter, thus far, has included an examination of the role of arbitration in settling labor/management grievances and the criteria arbitrators use in making decisions in disciplinary cases. Arbitration cases for excessive absenteeism are used in this study as the means to examine arbitral decision-making. The next section of this chapter provides an overview of the literature on absenteeism as it impacts the workplace setting.

An Overview of Absenteeism

Absenteeism is a major concern of American organizations today. Absenteeism costs American businesses an estimated $30 to $40 billion each year (Steers and Rhodes 1984, 233). Approximately 2.3 percent of the American workforce does not report for work each day (U.S. Department of Labor 1989, 27). In 1979, the Bureau of Labor Statistics (Taylor 1979, 49-53) estimated that total paid sick leave costs in 1978 were approximately $116 per employee. This figure, however, does not include all the additional costs of employee absenteeism, such as lost productivity or replacement employees. Obviously, understanding and reducing employee absenteeism is a desirable objective.

The Bureau of National Affairs (1985, 25) reports that absenteeism is the number one disciplinary problem for managers. Block and Mittenthal (1985, 77) identify absenteeism as the most common reason for taking a discipline case to arbitration. Research efforts in the area of absenteeism,

however, have produced little in the way of practical solutions to this immense and serious concern.

In recent years there has been an increase in research on the topic of absenteeism in organizations. This may be a result of increased sensitivity to the problems of employees in the workplace. These problems have been correlated to turnover, decreased productivity, and lack of commitment. The increase in absenteeism research may also be a result of a desire by organizations to improve efficiency and maintain their places in increasingly competitive marketplace.

Although the volume of literature on absenteeism has increased recently, research efforts have produced little in the way of practical solutions to the problem. Steers and Rhodes have examined the topic extensively in 1978, and provided a comprehensive review of absenteeism studies prior to that time. More recently these prominent researchers in absenteeism declared:

> It should be clear from this review of the literature on employee absenteeism that we know far less about absenteeism than we would like to. We know that it can represent a serious problem for organizations, but we know little about what to do about it. Moreover, the research that does exist is often flawed to the point where the utility, if not the validity, of the results is questionable (Steers and Rhodes 1984, 263).

Absenteeism is defined as an individual's unavailability for work when work is available for the individual. Absenteeism is generally subclassified into two categories: avoidable or controllable absences and unavoidable or

uncontrollable absences. Chadwick-Jones, Brown, and Nicholson (1973) classify absences as either A-Type or B-Type. A-Type absences are those that are unavoidable in nature.

> A-Type absences are legitimate and are justified by definitions of necessity. Their determinants may be extra-organizational: for example, disabling and infectious ailments, bereavement, or serious illness in the immediate family, and social duties such as jury service; or they may be internal: industrial accidents, strikes, suspensions, or lay-offs (Chadwick-Jones, Brown, and Nicholson 1973, 75).

B-Type absences are those that are voluntary or avoidable in nature.

> B-Type absences are those seen to lack imperative personal or situational justification and which allow for the exercise of individual choice and decision. Extreme examples are usually condemned as irresponsible . . . (Chadwick-Jones, Brown, and Nicholson 1973, 75).

Organizations identify and subclassify absences using organizational specific factors. The norm or expected employee attendance behavior is unique in each organization. In grievance and arbitration proceedings involving excessive absenteeism, the bases used to establish personnel policies are scrutinized. In order to formulate and implement effective personnel policies and control procedures, organizational absenteeism must be understood and examined.

Measuring Employee Absenteeism

In order to understand the nature of employee absenteeism in organizations, how absenteeism is measured must first be understood. In a

survey of 500 American firms, Hedges (1973) found that fewer than 40 percent of the firms surveyed kept absenteeism records. The Bureau of National Affairs (1981, 3), however, reported that 82 percent of the surveyed companies recorded and measured job absences.

Several factors have been used to measure absenteeism. One of the most widely used and accepted measures is the time lost index (Huse and Taylor 1962). This measure is computed as the ratio of time lost to total scheduled work time for a specified period of time. This measure indicates the proportion of each workday or workweek lost to absenteeism.

The worst day index is calculated by finding the average time lost index for each day of the workweek over a specified period of time, identifying the best and worst time lost indices, and then subtracting the best time lost index from the worst (Dilts, Deitsch, and Paul 1985, 10). What this method actually determines is the range of variation in time lost to absenteeism. A pattern may be shown using this measure for absence variations between workdays immediately preceding and following scheduled days off and designated average workday. This method also examines variations in attendance for specific days of the week, such as Monday or Friday.

The frequency index measures the total number of absences for a specific period of time and ignores the number of days involved in each incident (Dilts,Deitsch, and Paul 1985, 10). Thus, a one-day absence is

measured the same as an absence of a week in duration. The frequency index is commonly used by industry to study the need for replacements to prevent production and service interruptions. It is also frequently used to determine the point at which absenteeism becomes excessive and, therefore, worthy of disciplinary action.

No uniformly accepted method for measuring absenteeism has been established. Several studies have examined and assessed factors contributing to absenteeism measurement. Huse and Taylor (1962) examined four indices: (1) absence frequency, (2) absence severity, (3) attitudinal absence, and (4) medical absences. Chadwick-Jones et al. (1971) used seven indices: (1) absence frequency, (2) attitudinal absence, (3) worst day, (4) time lost, (5) tardiness, (6) Blue Monday--difference between attendance on Monday and Friday of any given week, and (7) other reasons--absence for reasons other than certified sickness, holidays, or rest days. In an examination of these indices identified by previous researchers, Muchinsky (1977) found that absence-frequency measures exhibited higher reliability than the other measures.

The most common measure of absenteeism is the number of days scheduled to work but not worked. The basis for this measure is the time lost index. Many companies establish attendance goals which define the point at which absenteeism is excessive, and therefore disciplinary, by using this days lost index.

Various firms and industries set attendance goals which vary according to several factors. Ballagh, Maxwell, and Perea (1987) observed programs which set maximum absenteeism goals anywhere from 1 percent to 10 percent per year. The level of absenteeism considered acceptable varies widely among individual firms. Organizational and work factors often impact attendance related attitudes, policies, and practices.

The frequency index measures the total number of absences or absence incidents during a period of time. An incident occurs each time an employee is reported absent regardless of the number of days the absence covers. Arbitrators have generally found the number of absence incidents to be a more reliable and predictable measure of absenteeism than the days lost index (Cohen 1979, Role 1983). The rationale for using the frequency index is that chronically absent employees with several incidents of one- or two-day absences are more disruptive to the organization than employees who are ill for one extended period of time.

Employers may also use absenteeism measures to identify patterns of absenteeism behavior. Some patterns that may be identified involve absences before or after scheduled days off. Blue Monday, the tendency for absenteeism to be greater on Monday than on any other work day, is an example of a pattern which may be identified through a consistent and conscientious measurement of absenteeism. Pattern absences may lead to a

strong suspicion that the employee is not absent because of illness but perhaps because of sick leave abuses (Light 1978).

Pattern absenteeism is not a situation unique to the United States. The absenteeism picture in other countries is no less severe than in the United States. In Canada estimates of the annual cost of absenteeism range from $2.7 billion to $7.7 billion. Absenteeism rates in Western Europe range from a high in Italy of 14 percent to a low in Switzerland of 1 percent (Yankelovich 1979).

Italy has a severe problem with pattern attendance. When everyone shows up, twice a month, on paydays the organization cannot cope. There is not enough work to go around. This pattern attendance condition is called presentismo Italian manufacturers must hire 8-14 percent more workers than they need just to control for absenteeism (Mowday, Porter, and Steers 1982).

No single, universally accepted measure for absenteeism has been devised. Consequently, practitioners and researchers are forced to rely on several indices to measure the total impact of absenteeism. Because absenteeism remains a serious problem, a large number of theories have been generated in an attempt to explain employee absenteeism.

Theories of Absenteeism

Absenteeism theories are intended to account for absences from work and to permit the prediction and control of future attendance behavior.

Current theories adopt ideas from several research fields. Dilts, Deitsch, and Paul (1985) order the absenteeism theories and concepts into five broad categories: economic theory, psychological theory, sociological theory, jurisprudential theory, and disability theory. Dilts, Deitsch, and Paul (1985) recognize that some absenteeism theories and concepts fit into two or more of the categories based on their properties and characteristics. The authors stress that the theories of absenteeism, which differ in explanation and causes, also call for different remedial actions and considerations.

Economic Theory

Absenteeism is commonly explained using the economic theory. This theory purports that people do not really like to work, but that work is necessary in order to maintain a specific and desired standard of living. Working is one socially acceptable method of obtaining the necessary income. If the amount of income generated is greater than that perceived as necessary to maintain the desired standard of living, absenteeism may occur. Employee absenteeism is thought to increase when wages and real income levels increase, when the number of labor force participants in the family increases, and when employee benefits decrease the need for daily work attendance. Organizations may find that generous benefit plans seriously and negatively impact the organizational goal to have employees available for work when work is available for the employees (Dilts, Deitsch, and Paul 1985).

Psychological Theory

Dilts, Deitsch, and Paul (1985) include a number of theories in the psychological category. Major identified subclassifications include passive withdrawal theories and strategic withdrawal theories. Passive withdrawal theories focus on the employee's simple desire to avoid unpleasant situations. Strategic withdrawal theories focus on the employee's means of punishing the organization for the dissatisfaction it has caused.

J. Stacy Adams (1963) theorizes that individuals are motivated to act by inequity. Employees compare their inputs (education, experience, intelligence, skills, abilities, and efforts) and their outcomes (pay, security, recognition, working conditions, and advancement) with the inputs and outcomes of members of an identified reference group (co-workers, relatives, fellow professionals). If an employee's comparison of individual outcomes and inputs with those of the outcomes and inputs of a member in the reference group are not equal, inequity exists. Inequity induces a person to act to restore equity.

An individual may use several means to restore equity. The most common means involve altering outcomes and inputs. In order to achieve equity, the employee may request a pay raise, a job promotion, better working conditions, or more recognition. If these do not achieve the desired balanced ratio, the employee may alter inputs. The employee may

contribute less effort to the job, may request a transfer, may resign, or may escape the job situation by failing to report to work when scheduled.

Valence or expectancy theories are based on the idea that behavior and performance are a result of conscious choice and that people choose to do whatever they believe results in the highest payoffs for them personally (Porter and Lawler 1968; Vroom 1964). Expectancy, the perception of various cause/effect relationships, exerts influence at different points on the continuum from motivation through job performance to satisfaction. Valence is the value or attractiveness of the outcome. An employee's motivation to perform is determined by the performance-to-outcome expectancy multiplied by the valence of the outcome. Absenteeism may occur if the performance-to-outcome expectancy is weak or if the value of the outcome is negative.

Festinger (1957) and Vroom (1964) explain absentee behavior using a met expectations theory which is a form of cognitive dissonance theory. What a person encounters on the job in the way of positive and negative factors is compared to what the person expects to encounter. Any discrepancy may cause that person to be absent from work.

Hackman and Oldham (1976) believe everyone has a need to influence or control their environment. If the ability to exercise some degree of control over the work environment is not satisfied, the employee looks elsewhere to satisfy this need. The worker may need to be absent from the

workplace in order to satisfy this need. Absenteeism may offer the needed free time to develop other activities (moonlighting or recreational activities) over which the worker has control.

Maslow's (1954) theory lists human needs and ranks them in a hierarchy of importance. Lower-level needs are the primary influences activating human behavior; but as these needs are satisfied, higher-level needs become the principle motivators. Lower-level needs, such as those for food, water, shelter, safety, and security, would surely motivate workers to maintain good attendance records if attendance policies highly correlated attendance with pay and job security. Higher-level needs, however, may motivate employees' decisions to be absent if it is believed that they will not be missed or that management can easily find replacements. This feeling of not being needed or belonging may contribute to decisions to be absent.

The workload tolerance theory by Herzberg (Herzberg, Mausner, and Snyderman 1959) and the coping behavior theory by Alderfer (1972), are two strategic withdrawal theories. According to Herzberg, each individual has a specific amount of total work that can be tolerated. Hours of work is considered as a hygiene factor. Whenever the maximum tolerance work level is reached, absenteeism occurs. The worker cannot tolerate any additional work.

Alderfer (1972) telescopes needs into three groups: existence, relatedness, and growth. If a job is viewed as stressful, boring, or lacking in

meaning, absenteeism may be used as a coping behavior. Absence from work is a way to cope with the situation. Hill and Trist (1953) contributed to the theory that absence is withdrawal from the stress of work situations. They found that individuals who are experiencing conflicts of satisfactions and obligations tend to express themselves through labor turnover, accidents, and unsanctioned absences.

Sociological Theory

Sociological theories direct interest at understanding interdependent social behavior. Sociological theories that are important for the study of absenteeism focus on the impact that interdependent variables in the society, the organization, and the work group have upon individuals' attendance behavior. Absenteeism may be regarded by members of the work group as acceptable or even desired behavior. An employee's need to be accepted as a member of the group influences absenteeism behavior.

Competition for the employee's time may also be an important cause of employee absence. Absenteeism may result when an employee finds that scheduled hours of work reduce the number of hours needed to transact personal business or limit the hours available for leisure pursuits. Flextime is offered as one solution for absenteeism that is explained by this competition-for-time theory. Flexible working hours permit employees to conduct personal business that must occur during business hours that coincide with their regular working hours.

The steady erosion of the Protestant work ethic and the developing acceptability of the new work ethic is identified by some as a major factor in the rise in employee absenteeism (Bendix and Weber 1960, 266). The Protestant work ethic holds that work has value in and of itself; that regular and prompt work attendance is the proper way for workers to behave and is socially and morally desirable. The new work ethic holds that work is valued only for the income it generates and the economic security it provides. Therefore, attendance increases when the need for income increases, and absenteeism increases when the need for income and economic security decreases.

Jurisprudential Theory

The attitudes, policies, and procedures adopted by organizations affect employee job attendance.

> Employees judge and evaluate a firm's attitude toward absenteeism from the rules and regulations that it promulgates and administers; employee attitudes mirror those of management as expressed or implied through shop rules and their administration. A management attitude toward absenteeism that is perceived as cavalier due, for example, to lax enforcement of attendance-related discipline rules begets a similar attitude on the part of employees (Dilts, Deitsch, and Paul 1985, 36).

The attendance control policies adopted and administered by management must be viewed by employees as encouraging attendance and discouraging absenteeism. Attendance policies, disciplinary procedures, and the arbitration process itself are directly impacted by the jurisprudential theory.

Disability Theory

The disability theory explains absenteeism in terms of sickness or injuries that physically or mentally incapacitate the worker.

> Alcoholism, drug addiction, and self-inflicted disabilities fall within this category. The extent to which management "accepts" disability as an excuse for being absent depends on the nature and extent of disability (Dilts, Deitsch, and Paul 1985, 37-38).

Health education and awareness programs, preventive medicine, rehabilitation programs, employee counseling, and safety programs are all organizational efforts to reduce the causes of illness and injury-related absences.

The examination of absenteeism theories suggested by Dilts, Dietsch, and Paul (1985) employs five basic categories: economic, psychological, sociological, jurisprudential, and disability. Although their classification scheme offers insight into absenteeism, models suggested by other researchers are also useful in developing an integrated, policy-oriented approach to the understanding and control of absenteeism. An examination of these models follows.

Steers and Rhodes Model

Much of the previously mentioned work on absenteeism theory assumes that employees are generally free to choose whether to come to work or not. The implicit assumption in many of these theories is that the employee is in control of the situation and, thus, selects to be absent because

of some situational or individual circumstance. The previous theories also do not attempt to integrate variables. Each is narrowly focused and lacks the conceptual framework for an integrated model of attendance behavior. Steers and Rhodes (1978) found a model of employee attendance based on a review of 104 empirical studies which identifies the major sets of variables that influence attendance behavior.

The Steers and Rhodes Model identifies the major sets of variables that influence attendance behavior and suggests how such variables fit together in a general model of employee attendance. Steers and Rhodes (1978) found that attendance is directly influenced by two important variables: an employee's motivation to attend, and an employee's ability to attend.

The model accounts for both voluntary and involuntary absenteeism. The primary variable, attendance motivation, is largely influenced by satisfaction with the job situation and by various internal and external pressures to attend. Steers and Rhodes (1978) identified several factors in the job situation itself which influence an employee's motivation to attend. Job scope, job level, role stress, work-group size, leader style, coworker relations, and opportunity for advancement are identified as job situation factors which influence motivation to attend. An employee's values, job expectations, and personal characteristics are factors which also influence motivation.

Steers and Rhodes also identified major external influences on the pressure to attend. Conditions of the market or the economy, incentive or reward systems, work-group norms, the employee's personal work ethic, and organizational commitment are identified as external pressures which influence attendance motivation. Motivation to attend is determined largely by a combination of the employee's affective responses to the job situation and various internal and external pressures to attend.

Steers and Rhodes (1978) emphasize that absenteeism research fails to take into account involuntary absenteeism. Even if an employee wants to come to work and is highly motivated, there may be instances when attendance is not possible. The ability to attend is influenced by illness and accidents, family responsibilities, and transportation problems. Steers and Rhodes attempt to integrate the research into a systematic and conceptual model of attendance behavior.

Dilts, Deitsch, and Paul Model

Blumberg and Pringle (1982) propose a three-dimensional interactive model of work performance. Previous theories, they point out, fail to identify an important dimension of performance: the opportunity to perform. The employee's capacity to perform, willingness to perform, and opportunity to perform are all considered important determinants of employee performance by Blumberg and Pringle.

Dilts, Deitsch, and Paul (1985) apply the Blumberg and Pringle model to employee work attendance. Each of the three conditions suggested must be fulfilled before employees report for work. The three identified conditions are the employee's ability or capacity to attend, the employee's willingness to report to work, and the employee's opportunity to report to work. Dilts, Deitsch and Paul (1985, p.43) integrate the Steers and Rhodes Model of employee attendance with the Blumberg and Pringle Model of work performance. Employee absenteeism is influenced by a great number of variables and this model, they believe, illustrates how each variable influences and is influenced by the others. They suggest the model should be considered a process. Personal, job situational, and environmental variables exert influence on employee attendance through influence on the willingness, ability, and opportunity to attend. Some of the variables can be controlled by the employee or management while others cannot.

Research literature on employee absenteeism reveals a multiplicity of influences on attendance. This theoretical discussion also has practical implications. In the following section, the possible causes and major factors influencing employee absenteeism are discussed in an effort to identify steps to reduce unnecessary absenteeism.

Causes of Absenteeism

The causes of employee absenteeism are diverse and often highly interrelated. They may include both personal and organizational factors.

An examination and understanding of these elements should aid management in making decisions aimed at reducing employee absenteeism.

Personal Factors

The relationship between employee absenteeism and personal factors examines personal characteristics which influence attendance. The literature in this area includes the following personal characteristics: age, sex, marital status, family size, education level, occupation/job level, tenure/years of employment experience, stress and anxiety, and other personal factors.

Numerous studies of absenteeism have focused on age. The results, however, have been mixed. In a study of 81,307 federal employees, Campbell (1970) reported that employees sixty years and older had the highest absence rate (an average 10.9 days) while employees in the forty-two to forty-seven years age group had the lowest rate (an average 7.8 days). Taylor (1979, 51-52) concluded that a curvilinear relationship existed between age and absenteeism. He found the proportion of time lost for men remained steady from age twenty-five to fifty-four years but was highest for workers in the sixteen to twenty-four and fifty-five and over categories. However, women twenty-five to thirty-four years old had higher absence rates than women in either the sixteen to twenty-four year old or forty-five to fifty-four year old categories. One nationwide survey showed that workers forty-five years of age and older have fewer short term absences

(U.S. National Center for Health Statistics 1985, 54), but other reports indicate that older workers, especially males aged fifty-five and older, have higher absentee rates (Educational Research Service 1980, 27).

The available research on absenteeism and sex indicates that female employees have higher rates of absence than males.
According to the United States National Center for Health Statistics (1985, 55), the number of work-loss days per 100 currently-employed persons per year is 233.2 days for men, and 329.7 days for women. The Bureau of Labor Statistics (U.S. Department of Labor 1989, 27) reports absenteeism rates for men at 2.0 percent and women at 2.6 percent. Other factors which may influence this sex-absenteeism relationship are age, marital status, and occupation. Absenteeism among women increases with the number of school-age children since women are often the primary caretakers. Their willingness to miss work may also reflect the fact that women hold lower-paying jobs (Leigh 1983, 360).

Researchers have not found a consistent relationship between absence and employees' marital status or family size. Taylor (1979, 51) found that married men had lower absence rates than men who were never married. The reverse, however, was found true for women. Johns (1978) found no correlation between number of dependents and either absence frequency or time lost. Family and childcare responsibilities may impact these findings, but the relationship is not clear.

Taylor (1979, 52) found a negative relationship between education level and absenteeism. The percentage of time lost for workers with only an elementary school education was 4.9 percent; for high school graduates, 3.5 percent; and for college graduates, 2.1 percent. Johns (1978), however, failed to find a relationship between educational level and absenteeism.

A consistent relationship was found between occupation and absenteeism. In a 1973 to 1980 study, white-collar workers' absenteeism rate was 2.7 percent while blue-collar workers' absenteeism rate was 4.3 percent (Educational Research Service 1980, 35). Studies of the relationship between tenure or years of employment experience and absenteeism have produced conflicting results. Stress and anxiety, however, are consistently reported to positively correlate with absence (Bernardin 1977; Holmes and Rahe 1967).

Consistent associations have also been reported between absenteeism and employee sex, occupation level, and stress and anxiety. However, research findings on the relationship between absenteeism and tenure/years of employment experience, marital status, family size, education level, and age are inconclusive.

Organizational Factors

Factors associated with certain organizations and certain jobs may greatly influence employees' absenteeism. The following are organizational factors which may influence absenteeism: industry, organization size,

personnel policies, satisfaction with organizational policies and practices, employee control and participation, satisfaction with pay and promotion, organizational climate, availability of overtime work, bargaining and union activity, and employment status

Personnel policy and organizational climate are two organizational factors which are of direct interest to the study of absenteeism and the arbitration process. Questions which need to be answered include the following: Should management adopt a no-fault absenteeism policy? Should proof of illness be required? Can sick leave and personal leave be exchanged or accrued? Should a moderate amount of absence be accepted in the workplace? How will management's acceptance of absenteeism be interpreted and acted on by labor? Are existing attendance policies consistently enforced? The answers to these questions are important in order for management to understand the organizational elements which impact the establishment, implementation, and administration of fair and reasonable attendance control policies.

Attendance Control Policy

Attendance control policies generally establish minimal attendance requirements and outline disciplinary measures for failing to meet such standards. Each organization is unique, and therefore, must develop its own attendance control policy. "Faced with what is thought to be an absenteeism problem, a manager should start by asking questions, not seeking quick

cures," advises Kumitz (1977, 74). The main goal is to motivate employees with controllable absences to attend work on a consistent basis.

Latham and Napier (1984) suggest practical ways to increase employee attendance. Included in their report are the following behavioral interventions to enhance attendance: (1) Employee selection: Conduct realistic job previews. Validate selection instruments. Match applicant's capabilities and needs with the organization's requirements and climate. (2) Performance measurement: Establish whether measurement itself may be a motivator. (3) Training: Modify poor work habits. Develop an acceptance and understanding of the organization's need for employee attendance. (4) Employee involvement: Build participation into any change. (5) Instrumental satisfaction: Reward organizationally desired behavior. Tie pay to attendance. (6) Flextime: Offer attendance discretion. (7) Job enrichment: Maximize job identification. Encourage feedback, autonomy, recognition, and advancement. (8) Stress and self management: Offer stress management training. Offer wellness programs. Provide Employee Assistance Programs (EAPs) for problem intervention.

Researchers have found that the success of incentive or reward systems in attendance motivation are dependent on several factors. Rewards offered by the organization must be seen as both attainable and tied directly to attendance (Lawler 1971, 189). Organizations may unknowingly create

reward systems that reward nonattendance; for instance, the practice of providing a specific number of days of sick leave which are lost if not used.

Disciplinary sanctions by management in controlling absenteeism have been studied by a few researchers. Baum and Youngblood (1975) and Seatter (1961) found that the use of strict reporting and control procedures was positively related to lower absence rates. Rosen and Turner (1971) found no such relationship. Strict attendance control policies and implementation were found to reduce absenteeism among chronic offenders but not among average employees (Baum 1978).

There are many methods and combinations of methods which management can use to encourage attendance. A combination of methods which addresses all the causes for employee absenteeism will, of course, prove to be most successful. Most discharge cases for excessive absenteeism reach arbitration because of the establishment, implementation, and administration of an attendance control policy. However, some discharge cases reach arbitration even though the company has no formal attendance control policy.

> Although less than half (43 percent) of the companies have a written rule or policy describing excessive absence, more than nine out of ten (91 percent) have instituted progressive disciplinary procedures to handle absence problems (Bureau of National Affairs 1981, 6).

Establishing an Attendance Control Policy

Attendance control plans establish attendance requirements for employees and outline disciplinary measures for failing to meet the standards. Controlling absenteeism is generally considered to be a legitimate and essential business objective. Establishing an attendance control policy has, therefore, been recognized as one of management's rights.

"It is well established as a principle that Management has the right to expect and require regular attendance on the job" (Blair 1951, 383). "The right to control unnecessary absenteeism is the most basic and essential of management rights" (Wolff 1973, 1177). Management's right to establish an attendance control policy must be tempered, however, by the following attendance policy limitations: it must be reasonable; it should not conflict with the employer's collective bargaining agreement; it should be clear and adequately communicated by the employer to all employees; and it must be administered fairly and without discrimination (Richardson 1982, 678).

Establishing reasonable rules to distinguish between acceptable and unacceptable attendance is not an easy task for management. Guidelines for acceptable attendance can be reasonably based on historical averages of the firm's or industry's absenteeism rate. A structured approach for standardization of rules supports a consistency scrutinization. The two main types of attendance control policies are (1) excused/not excused, and (2) no-fault. The excused/not excused policy divides absences into two

categories: excused, necessary, involuntary; and unexcused, unnecessary, voluntary. The main goal of the excused/not excused policy is to eliminate unexcused, unnecessary absences. Unexcused absences are generally viewed as misconduct because they are avoidable. Excused absences are usually considered to be caused by circumstances beyond the employee's control. A major problem with the excused/not excused attendance control method is that a supervisor is generally responsible for determining when an absence is not excused. It is often difficult to make this distinction.

The no-fault attendance plan counts all absences regardless of cause against the employee's attendance record. The main goal of the no-fault policy is to promote a more consistent and objective plan which eliminates supervisor discretion. Since the mid-1970s the no-fault attendance control plan has gained popularity as employers look for a practical and effective way to control unnecessary absenteeism (Ballagh 1987, 37).

The attendance control policy generally establishes the disciplinary measures to be undertaken in the case of excessive absenteeism. Typically, a progressive discipline procedure is outlined. For example, x absence incidents in x period of time results in a verbal warning, x more incidents in the next x period of time results in a written warning, then a final warning, then discharge. Many plans offer an opportunity for employees to expunge an absence record. The number of incidents may be set back to zero in some cases after a specific period of time, usually each year. Employees may

also be able to reduce the number of points accumulated for absences with perfect records of attendance for set periods of time, usually several months. After establishing the attendance control policy, implementation occurs.

Implementing an Attendance Control Policy

Implementation of an attendance control policy is greatly enhanced by employee acceptance. Employee acceptance is greatly enhanced by soliciting employee input and feedback and by clear communication of the plan.

> In implementing a policy, management must clearly define the main requirements of acceptable attendance, and identify which employees will be covered by such policy. All affected employees should be given advance notice of the new rules so they can take corrective action, and, as a basic matter of fairness, all employees should start out with a "clean slate" under the new attendance policy (Ballagh 1987, 26-27).

Administering an Attendance Control Policy

A reasonable attendance control policy which is fairly administered serves the goals of management. Fair administration requires the maintenance of accurate and complete attendance records. Fair administration also requires forewarning or foreknowledge of possible disciplinary consequences, a fair and objective investigation of facts, consistent application of rules, and reasonable discipline measures for offenses. If the attendance control policy is administered fairly, arbitrators are likely to defer to management's decisions.

> Where the employer has announced a system of progressive discipline and has followed that system in a consistent and

> precise manner exercising reasonable judgment, it is inappropriate for the arbitrator to substitute his judgment or establish new rules or procedures (Daniel 1983, XI-1262).

Absenteeism is a major concern for American organizations today. Absenteeism is the number one disciplinary problem for management (Bureau of National Affairs 1985, 25). This study provides insights into this labor/management concern by examining the decision-making process of arbitrators in absenteeism cases.

In summary, the role of arbitrators in the arbitration procedure, the grievance procedure and just cause, and the process arbitrators undertake in decision-making have been examined in this chapter. Studies which have investigated the decision-making process of arbitrators and the factors used in this process were also surveyed. The nature, causes, and effects of excessive absenteeism in the workplace were also considered in this review of literature.

CHAPTER 3

METHODOLOGY

This chapter contains information on the sources of data, the methods of data collection, the dependent and independent variables, the statistical analysis, and the limitations of this study.

Sources of Data

Arbitration cases, including decisions and awards, are published by the Bureau of National Affairs, Commerce Clearing House, Prentice-Hall, the American Arbitration Association, and other sources. Absenteeism arbitration cases published by the Bureau of National Affairs and Commerce Clearing House were analyzed for this study because of their detail and completeness. The Bureau of National Affairs cases published from March 1, 1980 through September, 27, 1989, found in volumes 74 through 92, are included in this study. The Commerce Clearing House cases published from January 2, 1980 through August 14, 1990, found in volumes 80-1 through 90-2 are included in this study.

One hundred and ninety-five cases were examined for this study. These cases represent all arbitration cases for excessive absenteeism published by the Bureau of National Affairs and Commerce Clearing House

in the previously designated volumes. A list of the specific cases examined are included in the Appendix.

The category absence from work or absenteeism includes arbitration cases that encompass a variety of circumstances and management/labor disagreements. Included in this category are arbitration cases which examine the appropriateness of company attendance control policies, violation of the collective bargaining agreement when instituting a no-fault absenteeism policy, limitation of the use of sick/personal leave, classification of excused and unexcused absences, warnings and suspensions for absences, and discharge for excessive absenteeism. Only the arbitration cases which were brought to arbitration because the grievant was challenging the company's decision to discharge for excessive absenteeism are examined in this study.

The arbitrator includes in the opinion section of each arbitration case the factors which were considered in the decision-making process. Presumably, all the factors which ultimately affected the outcome of the case are identified here. The award section of the arbitration case identifies the decisional outcome determined by the arbitrator.

Data Collection

A copy of the data collection sheet used to record the information obtained from the discharge absenteeism arbitration cases is included in the Appendix.

Archival data is the least obtrusive method of data collection. It is best suited for examining data that occurred in the past. One of the disadvantages of archival research is that the skills of the researcher may be questioned (Buckley, Buckley, and Chiang 1976).

The threat to reliability of this study is rater reliability. In order to help guarantee rater reliability, two steps were taken. First, two arbitrators examined two cases to confirm the categorization of decisional factors by the researcher. Second, after the researcher completed the data collection, a random sample of 10 percent of the cases included in the study were reexamined to confirm that the second set of data collected conforms to the data collected the first time.

Dependent Variables

Three arbitral decisional outcomes were examined in this study. These outcomes represent the three possible awards arbitrators make in absenteeism discharge cases.

First, the grievance may be denied. If the grievance is denied, then management's decision to discharge the grievant for excessive absenteeism has been fully upheld. The grievant's employment is terminated.

Second, the grievance may be fully sustained. If the grievance is fully sustained, then management's decision to discharge the grievant for excessive absenteeism has been rejected. The grievant's employment is not

terminated, and the grievant is made whole in every respect. In this case, the grievant would receive all back pay, seniority, and other rights due.

Third, the arbitrator may reach a split decision. In a split decision, neither the company nor the grievant has completely prevailed. The grievant is reinstated in the job, but the arbitrator has prescribed other remedies for the excessive absenteeism other than discharge. Other remedies arbitrators assign are reinstatement with (1) no back pay, (2) partial loss of back pay, (3) probation, (4) counseling or enrollment in an employee assistance program, or (5) last chance agreement.

The three arbitral decisional outcomes are examined in this study using two dependent variables. The first operationalized dependent variable for this study is labeled company. The dependent variable, company, identifies whether management's decision to discharge has been fully upheld and the grievance has been denied or whether the grievance has been fully or partially upheld. Hypothesis one of this study tests whether meeting the seven key tests of just cause increases the likelihood that management's decision in a discharge case for excessive absenteeism is fully upheld. The dependent variable, company, tests under what set of conditions management's decision in a discharge case for excessive absenteeism can be expected to be fully upheld.

The other arbitral outcome examined in this study is when a split decision occurs. The second operationalized dependent variable for this

study is labeled mixed. The mixed dependent variable identifies whether the arbitration award was a split decision or whether the grievance was fully sustained. The variable mixed identifies a split decision versus an outright win for the grievant. Hypothesis two of this study tests whether partially meeting the seven key tests of just cause increases the likelihood that the arbitrator will reach a split decision in a discharge case for excessive absenteeism. To properly test hypothesis two, all cases in which management's decision to discharge have been fully upheld are excluded. The eighty-seven cases in this study in which the outcome was a split decision or the grievance was fully upheld are examined using the second dependent variable, mixed.

Independent Variables

The independent variables utilized in this study are the seven key tests of just cause as identified by Daugherty (1966) in Enterprise Wire Co. Koven and Smith (1985) further explain and illustrate each of these seven key tests. The following operational definitions of the seven key tests come substantially from the work by Koven and Smith in Just Cause: The Seven Tests. Test One: Notice.

Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?

Notice of misconduct--What actions can lead to discipline?

Notice of penalty--What are the consequences of misconduct?

Notice received--Did the grievant actually receive and understand the notice?

Preliminary warnings or suspension--Were earlier steps taken to identify for the grievant the severity of the misconduct?

Negative notice--Did lack of enforcement of rules nullify notice?

Test Two: Reasonable Rules and Orders.

Was the employer's rule or managerial order reasonably related to (1) the orderly, efficient, and safe operation of the employer's business, and (2) the performance that the employer might properly expect of the employee?

Contract consistency--Are the rules in agreement with the collective bargaining agreement?

Business related--Do the rules restrict personal freedom without serving a legitimate business need?

Arbitrary, capricious, or discriminatory?

Unreasonable application--Are the reasonable rules unreasonably applied?

Test Three: Investigation

Did the employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

Documentation--Has all physical, medical, and other evidence been obtained?

Timeliness--Was the investigation pursued in a timely manner?

Due process--Was the grievant given the right to be informed of the charges, present evidence for defense, obtain representation or counsel?

Test Four: Fair Investigation

Was the employer's investigation conducted fairly and objectively?

Foregone conclusion--Had employer reached a decision before investigation?

Evaluation--Did someone other than the supervisor who imposed discipline conduct the investigation?

Test Five: Proof

At the investigation, Did management officials obtain substantial evidence or proof that the employee was guilty as charged?

Evidence--Did the obtained evidence verify the charges?

Intent--Was the intent of the grievant's misconduct a considered element?

Creditability--Was the testimony of witnesses believable?

Test Six: Equal Treatment

Has the employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?

Title VII--Are protected and unprotected groups afforded the same treatment?

Accommodation--Was reasonable accommodation made for specific and justifiable circumstances?

Consistency--Were all employees treated the same way for the same behavior?

Past practice--Was there lax or discriminatory application of rules in the past?

Test Seven: Penalty

Was the penalty appropriate?

Was the degree of discipline administered by the employer in a particular case reasonably related to (1) the seriousness of the employee's proven offense, and (2) the record of the employee in his service with the employer?

Length of service--Has the grievant been a trouble-free employee for a long period of time?

Changeable circumstances--Can the grievant's situation be reasonably expected to change substantially so that behavior will be improved?

Progressive discipline--Was an opportunity afforded the grievant to address the misconduct, identify possible causes of the behavior, and work toward a solution of them?

Timeliness of penalty--Was action taken to remedy the grievant's misconduct in a timely manner?

Data Analysis

Factor analysis was used to examine the underlying structure of the variables in this study (Zeller and Carmines 1980, 15). Since the data were nominal, canonical analysis was used (Cohen and Cohen 1983, 458-462). Linear regression and logistic regression, methods designed to predict the probability that an event will occur when the dependent variable is dichotomous, were also used in this study. The statistical packages used were CSS-Complete Statistical Systems for the factor analysis (1988, 679-754) and canonical analysis (1988, 943-958) and Statistix 3.0 for the linear (1989, 147-165) and logistic regressions (1989, 142-146).

Limitations

Only approximately 4 percent of all labor arbitration awards are published (Gross 1967, 58). A limitation to this study is the representativeness of the cases examined for all absentee discharge cases. The publishing services, however, do express their desire to select a useful and consistent set of cases to publish.

A second possiblly limiting factor to this study is the question of veracity. Do arbitrators really state their decision-making process in the arbitration case opinion? Arbitrators are covered by the Code of

Professional Responsibility for Arbitrators of Labor-Management Disputes revised in 1974. This code, a joint statement by the American Arbitration Association, the Federal Mediation and Conciliation Service, and the National Academy of Arbitrators, identifies the professional responsibilities by which arbitrators are governed. Arbitrators are required to be honest, impartial, and competent. The code also calls for arbitrators to be forthright and honest in both procedural matters and in substantive decisions.

Summary

The methodology for this study of decisional factors used by arbitrators in determining the outcome of excessive absenteeism discharge cases is presented in this chapter. The sources of data, methods of data collection, variables examined, data analysis, and limitations of the study are also discussed.

CHAPTER 4

RESEARCH FINDINGS

The research findings of this study are presented in this study. The statistical analyses performed on the data are discussed in this chapter. This chapter also includes factor and canonical analyses of the dependent variables, descriptive data, correlation matrix, linear probability analysis, and logistic regression analysis.

Factor Analysis and Canonical Analysis

Three dependent variables were factor analyzed using an orthogonal varimax rotation. Results of this analysis are summarized in two tables in the Appendix. As shown in Table 7 there are two factors with eigenvalues greater than 1. The factor loadings in Table 8 indicate that the first factor is a labor/mixed versus company factor and the second factor is a company/labor versus mixed factor.

A canonical analysis was run using the two variables, labor/mixed versus company and company/labor versus mixed, as the dependent variables and four independent variables: notice, proof, equal treatment, and penalty. (The rationale for selecting only these four variables is found in the discussion of Table 1 of Chapter 4.) Results of the canonical analysis are

summarized in three tables in the Appendix. Two significant canonical variates with $\underline{R} = .90$ and $\underline{R} = .26$ are shown in Table 9. The first canonical variate is a labor/mixed versus company variate and the second canonical variate is a company/labor versus mixed variate (Table 10). As shown in Table 11, redundancy of canonical variate one is 55 percent. The redundancy of canonical variate two is 2 percent.

Descriptive Data and Correlation Matrix

The data were gathered from excessive absenteeism cases published by the Bureau of National Affairs and Commerce Clearing House. The 195 cases examined in this study represent all cases addressing discharge for excessive absenteeism published by the Bureau of National Affairs from March 1, 1980 through September 27, 1989 and all cases addressing discharge for excessive absenteeism published by Commerce Clearing House from January 2, 1980 through August 14, 1990. Of the 195 cases examined, the grievance was denied in 108 cases, fully sustained in 29 cases, and partially sustained in 58 cases.

The seven key tests of just cause as described by Daugherty (1966), are used as the seven independent variables: notice, reasonable rules, investigation, fairness of investigation, proof, equal treatment, and penalty. These seven independent variables are coded 0 and 1. A code of 0 for an independent variable indicates that the variable or key test of just cause was met by the company. If the arbitrator in the discussion section of the case

indicates that the company's management failed to meet the requirements necessary for establishing evidence of any of the independent variables, the independent variable is then coded 1.

The dependent variables are company and mixed. The dependent variable, company, was coded 0 if the grievance was fully or partially sustained and coded 1 if the grievance was fully denied. The dependent variable, company, was examined statistically to test hypothesis one which states that meeting the seven key tests of just cause will increase the likelihood that management's decision in a discharge case for excessive absenteeism will be fully upheld. If management's decision is fully upheld, the grievance is fully denied.

The dependent variable, mixed, was coded 0 if the grievance was partially sustained and coded 1 if the grievance was fully sustained. The dependent variable, mixed, was examined statistically to test hypothesis two. Hypothesis two states that partially meeting the seven key tests of just cause will increase the likelihood that the arbitrator will reach a split decision in a discharge case for excessive absenteeism. If the grievance is partially sustained, a split decision is reached.

Table 1 contains a summary of the descriptive data of the variables examined in the analyses. The mean, standard deviation, skewness, and kurtosis for each variable are presented.

For dichotomous variables coded as 0 and 1, the mean is the proportion of cases coded 1 in the data. The values in Table 1 show that penalty has the highest mean value. In each of the cases in this study, the penalty was termination. The arbitrators indicated the penalty was not appropriate in 67 cases. Management failed to meet the just cause standard of equal treatment in 28 cases. Management failed to meet the just cause standard of proof in 21 cases.

As indicated in Table 1, the values of the means for the independent variable: reasonable rules, investigation, and fairness of investigation are relatively small. These mean values indicate the very small proportion of times these three independent variables were coded as 1. In only a very few arbitration cases examined was it found that the company did not meet the requirements necessary for establishing the presence of these independent variables. Consequently, these variables were removed from further analyses.

In his study of drug and alcohol arbitration cases, Crow (1989) dropped the key test of fair investigation from analysis because of the very few times it was cited by arbitrators as a factor in decision-making. However, Crow found that the key test of investigation was significant to the outcome of drug and alcohol cases. In the absenteeism cases examined in this study, absenteeism is not an event, such as the use of drugs or alcohol on the job, which needs to be investigated. Accurate attendance

records which are included in the key test of proof provide the information or investigation needed by arbitrators for decision-making.

Table 1.--Descriptive Data

Variable	Mean	Standard Deviation	Skewness	Kurtosis
Notice	.1282	.3352	2.2071	2.9471
Rules	.0410	.1989	4.5924	19.4178
Investigation	.0103	.1010	9.6470	92.5104
Fair Investigation	.0103	.1010	9.6470	92.5104
Proof	.1077	.3108	2.5116	4.4064
Equal Treatment	.1436	.3516	2.0171	2.1319
Penalty	.3436	.4762	.6536	- 1.5661
Company	.5538	.4984	- .2150	- 1.9530
Mixed	.3333	.4741	.7071	- 1.5000

The correlation matrix of the four independent variables and two dependent variables is shown in Table 2. The variables do not appear to be highly correlated except in two instances. The -.81 correlation between penalty and company indicates a relatively strong relationship. The .72 correlation between company and mixed indicates that the dependent variables are not orthogonal. Therefore, the results of the analyses may, to

some extent, be an artifact of the common variance between the two independent variables.

Table 2.--Correlation Matrix

Variable	1	2	3	4	5	6
1. Notice	1.00					
2. Proof	.16	1.00				
3. Equal Treatment	.24	.19	1.00			
4. Penalty	.27	.10	.29	1.00		
5. Company	- .43	- .39	- .46	- .81	1.00	
6. Mixed	- .02	.17	.29	.10	.72	1.00

Linear Probability Analysis

The results of the weighted least square linear regression analysis for the dependent variable, company are presented in Table 3. When the dependent variable is an indicator variable taking on values 0 and 1, the method of weighted least squares provides unbiased estimates that are asymptotically normal under quite general conditions. Hence, when the sample size is large, inferences concerning the regression coefficients and mean responses can be made in the same fashion as when the error terms are assumed to be normally distributed (Neter, Wasserman, and Kutner 1983, 357-361).

Table 3.--Weighted Least Squares Linear Regression for Company as Dependent Variable*

Variable	▲B	▲C	▲Adj R^2	▲t	▲P	B	t	p
Penalty	- .84375	.84375	0.6480	-18.92	0.0000	-.72086	-19.91	0.0000
Equal Treatment	- .34550	.86804	0.7012	- 5.92	0.0000	-.24220	- 4.93	0.0000
Proof	- .44957	.90180	0.7764	- 8.10	0.0000	-.42091	- 7.92	0.0000
Notice	- .2331	.91152	0.7975	- 4.57	0.0000	-.23312	- 4.57	0.0000

Note: Overall F = 192.00, p = 0.0000, DF = 190, Residual Mean Square = .2035
*Also called a Linear Probabilty Model (Neter, Wasserman and Kutner 1983)

The linear probability model was run as a hierarchical regression with four steps. The independent variable, penalty, was included in step 1, equal treatment was added in step 2, proof was added in step 3, and notice was added in step 4. Step 4, with all four independent variables, explains 80 percent of the variance. Mallows Cp at each step indicated the model was statistically unbiased. Mallows Cp is a statistical nontheoretical test of the degree to which an individual variable contributes to the model.

If all four independent variables are equal to 0, then the coefficient for the constant indicates the probability that the grievance will be denied is 91 percent. If equal treatment, proof, and notice are held constant and penalty is coded 1 to indicate the company did not meet this just cause standard, then there is only a 19 percent probability that the grievance will be denied. If penalty, equal treatment, and notice are held constant and the just cause standard of proof is coded 1 to indicate it was not met by the company, there

is a 49 percent probability that the grievance will be denied. If equal treatment is coded 1 with the other variables held constant, the probability of the grievance being denied is 67 percent. If notice is coded 1 with the other variables held constant, the probability of the grievance being denied is 68 percent.

An analysis of the residuals from the weighted least squares linear regression of the dependent variable, company, were examined and found to be homoscedastic and uncorrelated. The residuals, however, were not normal but were found to be significantly leptokurtic and left skewed. The size of the sample ($\underline{N}$ = 195), suggests this is not of inferential concern.

The results of the weighted least square linear regression analysis for the dependent variable, mixed are presented in Table 4. The linear probability model was run as a hierarchical regression, without intercept, with the independent variables, penalty, equal treatment, proof, and notice added at each subsequent step. Mallow Cp indicated that the added variable at each step significantly increased the predictability of the model until notice was added. Notice did not contribute significantly to this model. If penalty, equal treatment, and proof are not met by the company, there is an 80 percent probability that the grievance will be fully sustained, as opposed to a split decision.

An analysis of the residuals from the weighted least squares linear regression of the dependent variable, mixed, were examined and found to be homoscedastic and uncorrelated. The residuals were found to be normal.

Table 4.--Weighted Least Squares Linear Regression for Mixed as Dependent Variable*

Variable	▲B	▲Adj R^2	▲t	▲P	B	t	P
Penalty	.35821	.2883	6.02	0.0000	.23300	3.66	0.004
Equal Treatment	.36238	.3847	3.80	0.0003	.31665	3.30	0.0120
Proof	.26194	.4233	2.59	0.0114	.26422	2.57	0.0014
Notice	-.015844	.4165	-0.16	0.8742	-.015844	-0.16	0.8742

Overall F = 16.53
P Value = 0.0000
DF = 83
Residual Mean Square = .09580

*Also called a Linear Probabilty Model (Neter, Wasserman, and Kutner 1983)

Logistic Regression Analysis

An alternative analysis when the dependent variable is dichotomous is logistic regression. Logistic regression provides a convenient and reasonable model to describe the relationship between the dependent variable and a set of independent variables and overcomes some limitations of the linear probability analysis. Logistic regression examines the relationships between the variables with logistic transformations using the maximum likelihood

estimation method. Predicted values fall in the interval between 0 and 1 and, therefore, can be interpreted as probabilities (Hosmer and Lemeshow 1989; Statistix 1989).

The results of the logistic regression analysis for the dependent variable, company are presented in Table 5. The independent variable, penalty, was included in step 1, equal treatment was added in step 2, proof was added in step 3, and notice was added in step 4. The marginal chi-square statistic at each step indicates that the inclusion of each independent variable significantly improves the model. The residuals after the logistic regression analysis for labor were examined and found to be homoscedastic and uncorrelated, leptokurtic and left skewed.

The logistic coefficients can be interpreted as the change in log odds associated with a one-unit change in the independent variable. For meaningful interpretation, the logistic coefficients can be transformed to probabilities.

If all the independent variables are 0, then from the value of the coefficient for the constant (4.6821) it is determined that there is a 99 percent probability that the grievance will be denied. When the value of penalty changes from 0 to 1 and the values of the other independent variables remain the same, there is a .00044 percent probability that the grievance will be denied. When the value of equal treatment is 1 and the other variables are 0, there is a .0029 percent probability that the grievance

will be denied. When the value of proof is 1 and the other variables are 0, there is a .0014 percent probability that the grievance will be denied. When the value of notice is 1 and the other variables are 0, there is a .0026 percent probability that the grievance will be denied.

Table 5.--Logistic Regression for Company as Dependent Variable

Variable	▲B	▲C	Deviance	Marginal X^2	DF	▲P	B
Constant	--	.2162	1085	--	194	0.0000	4.682
Penalty	-13.252	1.6864	448.9	636.1	1	0.0000	-17.012
Equal Treatment	-13.139	2.2842	296.7	152.2	1	0.0000	-15.128
Proof	-13.910	3.2958	139.6	157.1	1	0.0000	-15.843
Notice	-15.224	4.6821	46.02	93.58	1	0.0000	-15.224

Deviance = 46.02
DF = 190

The results of the logistic regression analysis for the dependent variable, mixed are presented in Table 6. The independent variable, penalty, was included in step 1, equal treatment was added in step 2, proof was added in step 3, and notice was added in step 4. The marginal chi-square statistic indicates that equal treatment is highly significant and proof may also be considered a significant variable. The residuals after the logistic regression analysis for mixed were found to be homoscedastic, uncorrelated, and normal.

From the logistic coefficients indicated in Table 6, it can be determined that if the four independent variables have values of 0, there is a 5 percent probability that the grievance will be fully sustained. In this analysis, only equal treatment and proof are found statistically significant.

Table 6.--Logistic Regression for Mixed as Dependent Variable

Variable	▲B	▲C	Deviance	Marginal X^2	DF	▲P	B
Constant	--	.6932	54.55	--	86	--	-2.8272
Penalty	.5155	-1.0986	54.14	.41	1	.5312	1.5155
Equal Treatment	1.4551	-1.8842	49.91	4.23	1	.0484	1.6068
Proof	1.4869	-2.8497	47.13	2.78	1	.1106	1.4861
Notice	- .0736	-2.8272	47.12	.01	1	0.9273	.0736

Deviance = 47.12
DF = 82

A value of 1 for the highly significant variable, equal treatment, results in a 23 percent probability of the grievance being fully sustained. Values of 1 for both equal treatment and proof increase the probability that the grievance will be fully sustained to 56 percent.

CHAPTER 5

DISCUSSION AND CONCLUSIONS

This study was concerned with determining which factors are used by arbitrators in deciding the outcome of disciplinary labor arbitration cases involving excessive absenteeism. Excessive absenteeism arbitration cases were examined and data were analyzed against a model to determine significant factors used in this arbitral decision making process. This chapter presents a synopsis of the study, a discussion of the findings, implications for further study, and conclusions.

Synopsis of the Study

Employee absenteeism drains billions of dollars each year from the American economy. Employers are anxious to understand absenteeism, to determine what causes it, to find solutions to it, and to establish rules and disciplinary action able to control it. The most common type of case taken to arbitration involves discipline for excessive absenteeism. Block and Mittenthal (1985) declare that even though absenteeism is the most common type of disciplinary arbitration case, absentee grievances are not fully understood and a lack of understanding about the conceptual issues which underlie absentee disputes remains.

The purpose of this study was to examine the factors used by arbitrators in deciding the outcome of disciplinary labor arbitration cases involving absenteeism. Daugherty (1966), in Enterprise Wire Co., identifies seven key tests of just cause as the significant factors arbitrators use when determining the outcome of disciplinary cases. These seven key tests of just cause, identified by Daugherty (1966) and developed by Koven and Smith (1985), were used as the basis for examining the cases in this study.

One hundred and ninety-five disciplinary arbitration cases for excessive absenteeism were examined in this study. The cases examined were published by the Bureau of National Affairs from March 1, 1980 through September 27, 1989 and by the Commerce Clearing House from January 2, 1980 through August 14, 1990. Each of the cases examined in this study which were brought to arbitration because the grievant was challenging the company's decision to discharge for excessive absenteeism. Linear probability and logistic regression analyses were used to evaluate the hypotheses.

Discussion of Findings

Statistical analyses were conducted to test the two hypotheses of this study. The first hypothesis stated that meeting the seven key tests of just cause would increase the likelihood that management's decision in a discharge case for excessive absenteeism would be fully upheld. The second hypothesis stated that partially meeting the seven key tests of just cause

would increase the likelihood that the arbitrator would reach a split decision in a discharge case for excessive absenteeism.

It was found that in 55.4 percent of the 195 absenteeism cases studied the arbitrator determined that the grievance should be denied. In these cases there was a clear cut win for the company and the grievant was terminated. In 14.9 percent of the cases the arbitrator determined that the grievance should be fully sustained. In these cases there was a clear cut win for the grievant and the grievant was put back to work with all seniority, pay, and other benefits reinstated. In 29.7 percent of the cases the grievance was partially sustained. This is also called a split decision since neither management nor the grievant prevailed entirely.

Arbitration is less costly and time consuming than settling management and labor disagreements through the courts, but it is not without its costs. Therefore, it seems reasonable that both management and labor would want to be able to recognize the factors that affect the arbitral outcome.

In this study of absenteeism cases the factors deemed significant in determining whether the company will win, the grievant will win, or a split decision will be reached were examined. The mean values, as indicated in Table 1, for three of Daugherty's seven key tests of just cause were so small that they were excluded from the analyses. These key tests used were investigation, fair investigation, and rules.

In only two cases did the arbitrators indicate that an investigation was not conducted and therefore contributed to the arbitral decision making process. In only two cases did the arbitrators indicate that the fairness of the investigation was questioned and therefore contributed to the arbitral decision making process. In only eight cases did the arbitrators indicate that the just cause test of rules was not met by the company. This does not indicate that these tests of just cause, however, are not important. It indicates only that the arbitrators did not find fault when considering these key tests. The following discussion offers some conclusions about this finding.

The key test of rules considers whether the employer's rule or managerial order is reasonably related to (1) the orderly, efficient, and safe operation of the employer's business, and (2) the performance that the employer might properly expect of the employee. In the case of absenteeism, arbitrators accept the premise that the company has the right to expect employees to be present. Arbitrator Teple is often quoted when arbitrators examine the key test of rules in absenteeism cases.

> At some point the employer must be able to terminate the service of an employee who is unable to work more than part time, for whatever reason. Efficiency and the ability to compete can hardly be maintained if employees cannot be depended upon to report for work with reasonable regularity (Teple 1967, 618).

More recently, arbitrators have continued to express the view that regular attendance can be expected by the employer. "Every employer is

entitled to the regular attendance of employees at the times they are scheduled" (Duff 1986, 519). "Absenteeism in industry is a serious problem and one which the employer is not required to tolerate. It is as unfair to the other employees as it is to the employer" (Morgan 1986, 88). Grievants' absences affect "the ability of the company to schedule work, to assign work, and to manage its business" (King 1987, 726). "An employer has the right to discipline and discharge employees to insure the productivity of the business enterprise" (Baron 1987, 1319). Reasonable attendance is expected even if attendance rules are not specified; therefore, arbitrators do not look to the establishment of reasonable rules and orders concerning absenteeism as a significant factor in determining the outcome of absenteeism cases.

The key tests of investigation and fair investigation consider whether the employer, before administering the discipline to the employee, made a fair and objective effort to discover whether the employee did in fact violate the rules. Certain specific behavior in the workplace is considered grounds for termination, such as using drugs on the job, insubordination, fighting, and theft. Since absenteeism is not an event, as are the previously mentioned behaviors, there is little to investigate. Accurate attendance records should provide all the information needed. The findings of this study support the thesis that in absenteeism cases the just cause tests of rules, investigation, and fair investigation are not significant in determining the outcome of the case.

To test hypothesis one, linear probability and logistic regression analyses were performed using the variable, labor, as the dependent variable. All four independent variables examined -- penalty, equal treatment, proof, and notice -- were significantly important in determining the outcome of the case.

From the logistic regression analysis it was found a company has a 99 percent probability of winning the excessive absenteeism arbitration case if all of the four key tests of just cause analyzed are met. This means that penalty, equal treatment, proof, and notice are considered by the arbitrator as critical factors in the case. The company has to meet all four of these factors--it has to do everything right--in order to assure a high probability of winning the arbitration case. These findings strongly support hypothesis one.

Penalty was determined by both the linear and logistic analyses to be the most important factor used by arbitrators in determining the outcome of cases. The just cause test of penalty considers whether the degree of discipline administered by the employer in a particular case was reasonably related to (1) the seriousness of the employee's offense, and (2) the record of the employee in his service with the employer.

Arbitrators indicate that the employer must make a good faith effort over a reasonable time period to eliminate the cause of absenteeism before termination will be upheld. "The Company had not attempted any

investigative procedures whatsoever as to <u>why</u> this amount of time off was being taken" (Feldman 1985, 125). "The Company did not give adequate consideration to the individual circumstances involved but instead relied primarily if not solely on the absentee rate" (MacLean 1982, 746). "...because that assistance was not suggested the discharge should be modified" (Angelo 1987, 236).

Arbitrators also indicate that employers must give the employee an opportunity for improvement. "The Company's failure to recognize that grievant was an alcoholic and to provide her with the opportunity for rehabilitation . . . mandates that the discharge penalty be modified" (Alexander 1985, 477). "There is no evidence that the Company made any effort to evaluate [the employee's] potential for better attendance or to encourage improvement" (Duda 1984, 655).

If the cause for excessive absenteeism has been cured and documented by a reliable source, then the arbitrators hold this factor as a reasonable basis for reinstatement. The arbitrators indicate that an employee needs another chance to prove rehabilitation was completed. Arbitrator Weiss addresses this aspect of penalty directly:

> the excessive number of absences has been primarily due to a medical condition which has now been corrected. According to her doctor . . . her prospects for regular attendance in the future were good (Weiss 1988, 234).

Other arbitrators have also expressed the need to examine the future likelihood of continued attendance problems.

> at the point of discharge, future likelihood of attendance is a factor which the employer must consider in determining whether the discharge action was appropriate (Michelstetter 1982, 73).
>
> His own physician stated that Grievant would always have back problems, resulting in an unpredictable number of good and bad days . . . . The Arbitrator concludes there from [sic] that Grievant is unlikely to work dependably in the future (Katz 1984, 910).
> Now that he recognizes his alcoholism problem and has been able to get it under control, he deserves one final opportunity to show he can meet his attendance . . . obligations to the Company (Abrams 1986, 1042).

Logistic regression analysis indicates that if penalty is determined by the arbitrator to be inappropriate, there is only a .00044 percent probability that the grievance will be denied. The company, therefore, needs to make the effort to identify the cause of the excessive absenteeism, provide sufficient opportunity for improvement, and examine the results of rehabilitation and prognosis for continued success if there is to be any hope for meeting the just cause standard of penalty as determined by the arbitrators.

Logistic regression analysis also indicates that if proof is not met by the company, there is only a .0014 percent probability that the grievance will be denied. If notice is not given there is only a .0026 percent probability that the grievance will be denied. If equal treatment is not proven there is only a .0029 percent probability that the grievance will be denied. It is critical to the success of a company's case that penalty, equal treatment,

proof, and notice be met. If any one of these is not met, the probability is greater than 99 percent that the discharge will be overturned.

To test hypothesis two, linear probability and logistic regression analyses were performed using the variable, mixed, as the dependent variable. From the linear regression analysis, three of the independent variables--penalty, equal treatment, and proof--were found to be significantly important in determining the difference between the grievance being fully sustained and only partially sustained.

From the logistic regression analysis it was found there is only a 5 percent probability that the grievance will be fully sustained if the four key tests of just cause are met by the company. If, however, equal treatment, which was found to be the most highly significant factor when examining the difference between partially and fully sustained grievances, is not met by the company, then the probability of the grievance being fully sustained is 23 percent. If both equal treatment and proof are not met by the company, then there is a 56 percent probability that the grievance will be fully sustained, as opposed to being only partially sustained.

These findings support hypothesis two which states that partially meeting the seven key tests of just cause increases the likelihood that the arbitrator will reach a split decision. Equal treatment and proof appear to be the two key tests of just cause which contribute most to determining if

the grievance will be fully sustained or if the arbitrator will reach a split decision.

Implications for Further Study

The finding of the current study raise a few questions for future research and study.

Would an examination of disciplinary cases for reasons other than absenteeism show similar results? Disciplinary cases which could be examined are insubordination, fighting, theft, dishonesty, gambling, and sexual harassment. Replications of the results found in this study in further research conducted on other disciplinary cases would lend generalizability to the findings.

Would replications of this study for absenteeism cases in other time periods support this study's findings? Cases from 1980 through 1990 are examined for this study. Would the results from an examination of cases in previous ten-year time periods produce the same results? If not, are there identifiable changes within the workplace which can help explain the differences?

If arbitrators were polled, would they identify Daugherty's seven key tests of just cause as critical factors in their arbitral decision making? Would they identify some of Daugherty's key tests as more important than others? Would arbitrators identify other factors as significantly important in their decision-making process?

Conclusion

Meeting Daugherty's four critical key tests of just cause is vital to a successful outcome for the company in an absenteeism arbitration case. If an examination of the case indicates that any of these four tests has not been met, management and labor can predict with great assurance what the outcome will be. This information aids both sides in determining whether to take the case to arbitration or not.

In addition, meeting Daugherty's four critical key tests of just cause increased the likelihood of a split decision, as opposed to the grievance being fully sustained. Factors which were more significant in predicting whether the grievance would be fully or partially sustained were also identified.

APPENDIX

NO.__________

DATA COLLECTION SHEET

CITATION ____

PARTIES ____

____

AWARD DATE ____

TERMINATION DATE ____

ISSUE: ____

____

ARBITRATOR: ____________________ AAA___ FMCS___ OTHER___

AWARD - WINNER:

1. UNION
2. COMPANY
3. SPLIT DECISION
   - A. WITHOUT BACK PAY
   - B. PARTIAL LOSS OF BACK PAY,________DAYS
   - C. REHABILITATION/COUNSELING OR EAP
   - D. LAST CHANCE AGREEMENT
   - E. ____________________

NO. _______

ARBITRATOR'S DECISION CUES:

CO. DID	CO. DID NOT		
_____	_____	1.	NOTICE ESTABLISHED ATTENDANCE POLICY ______________________
_____	_____	2.	REASONABLE RULES AND ORDERS POLICY NECESSARY FOR COMPANY BUSINESS ______________________
_____	_____	3.	INVESTIGATION CONDUCTED ______________________
_____	_____	4.	INVESTIGATION FAIR AND OBJECTIVE ______________________
_____	_____	5.	PROOF OR EVIDENCE OF GUILT FOUND ______________________
_____	_____	6.	EQUAL TREATMENT CONSISTENT POLICY APPLICATION ______________________
_____	_____	7.	PENALTY -- APPROPRIATE FOR CIRCUMSTANCES ______________________

LIST OF CASES

BUREAU OF NATIONAL AFFAIRS CASES

92 LA 124
92 LA 634
92 LA 1021
92 LA 1289
91 LA 52
91 LA 154
91 LA 231
91 LA 356
91 LA 653
91 LA 749
91 LA 1126
91 LA 1206
90 LA 31
90 LA 131
90 LA 233
90 LA 423
90 LA 427
90 LA 469
90 LA 617
90 LA 1194
90 LA 1305
89 LA 122
89 LA 388
89 LA 597
89 LA 725
89 LA 804
89 LA 861
89 LA 1062
89 LA 1150
89 LA 1221
89 LA 1237
89 LA 1316
88 LA 32
88 LA 98
88 LA 161
88 LA 223
88 LA 270
88 LA 275
88 LA 343
88 LA 347
88 LA 745
88 LA 1092
88 LA 1214
88 LA1 241
87 LA 83
87 LA 236
87 LA 260
87 LA 586
87 LA 589
87 LA 691
87 LA 867
87 LA 975
87 LA 1039
86 LA 120
86 LA 393
86 LA 517
86 LA 573
86 LA 601
86 LA 673
86 LA 686
86 LA 719
86 LA 786
86 LA 1009
86 LA 1077
86 LA 1263
86 LA 1277
85 LA 225
85 LA 359
85 LA 579
85 LA 769
85 LA 921
84 LA 257
84 LA 459
84 LA 476
84 LA 543
84 LA 613
84 LA 761
83 LA 907
82 LA 31
82 LA 652
81 LA 333
81 LA 403
81 LA 625
81 LA 733
81 LA 677
81 LA 700
81 LA 929
80 LA 7
80 LA 365
80 LA 560
80 LA 735
80 LA 893
80 LA 1086
80 LA 1286
79 LA 89
79 LA 128
79 LA 183
79 LA 299
79 LA 529
79 LA 742
79 LA 837
78 LA 964
78 LA 71
78 LA 202
78 LA 233
78 LA 673
78 LA 809
78 LA 1163
78 LA 1323
77 LA 428
77 LA 585
77 LA 959
77 LA 1049
76 LA 509
76 LA 676
76 LA 771
76 LA 845
75 LA 430
75 LA 1285
74 LA 290
74 LA 507
74 LA 531
74 LA 623
74 LA 607
74 LA 641
74 LA 682
74 LA 847

COMMERCE CLEARING HOUSE CASES

90-2 ARB 8341
90-1 ARB 8081
90-1 ARB 8111
90-1 ARB 8127
90-1 ARB 8194
90-1 ARB 8285
90-1 ARB 8291
89-2 ARB 8310
89-2 ARB 8309
89-2 ARB 8548
89-2 ARB 8536
89-2 ARB 8398
89-2 ARB 8538
89-2 ARB 8418
89-1 ARB 8252
89-1 ARB 8149
89-1 ARB 8118
89-1 ARB 8083
88-2 ARB 8588
88-2 ARB 8424
88-2 ARB 8362
88-1 ARB 8226
88-1 ARB 8254
88-1 ARB 8066
87-2 ARB 8434
87-2 ARB 8573
87-2 ARB 8363
87-1 ARB 8172
87-1 ARB 8157
87-1 ARB 8052
86-2 ARB 8371
86-2 ARB 8344
86-1 ARB 8242
85-2 ARB 8613
85-2 ARB 8332
85-2 ARB 8556
85-2 ARB 8550
85-2 ARB 8511
85-2 ARB 8421
85-2 ARB 8391
85-1 ARB 8205
85-1 ARB 8003
85-1 ARB 8297
85-1 ARB 8048
85-2 ARB 8525
84-2 ARB 8594
84-2 ARB 8569
84-2 ARB 8477
84-2 ARB 8475
84-1 ARB 8294
84-1 ARB 8268
84-1 ARB 8246
84-1 ARB 8208
84-1 ARB 8183
84-1 ARB 8121
84-1 ARB 8072
84-1 ARB 8099
83-2 ARB 8588
83-2 ARB 8438
83-1 ARB 8168
81-2 ARB 8550
81-2 ARB 8390
81-2 ARB 8570
81-1 ARB 8080
81-1 ARB 8194
81-1 ARB 8179
80-2 ARB 8561
80-1 ARB 8316

Table 7.--Eigenvalues--Simple Values

	Simple Value
Factor 1	1.757633
Factor 2	1.242366

Table 8.--Normalized Factor Loadings

Variable	Factor 1	Factor 2
labor	.881387	.472394
company	.007590	.999970
mixed	.964346	.264644

Table 9.--Chi-Square Tests with Succesive Roots Removed

Roots Removed	Canonical $\underline{R}$	Canonical $\underline{R}^2$	Chi-Square	df	P	Lambda Prime
0	.90687	.82241	343.0154	8	.0000	.16520
1	.26414	.06977	13.7774	3	.00322	.93023

Table 10.--Factor Structure for Dependent Variables

Variable	Root 1	Root 2
company	.98614	-.16593
mixed	.60060	-.79955

Table 11.--Variance Extracted from Dependent Variables

Factor	Variance Extracted	Redundancy
Root 1	.66659	.54821
Root 2	.33341	.02326

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