

# Arbitration assignment argumentative essays examples

[Business](#), [Company](#)



## **Introduction**

This application addresses the arbitral proceedings initiated by the International Association of Pharmaceutical Workers (henceforth referred to as “ the Union”) on behalf of Clark Kent (“ the Griever”) against Wayne Biotech Enterprises (henceforth referred to as “ the Company”). The company wants Clark Kent’s immediate dismissal to be upheld by the arbitrator. The first grievance, which was filed on December 6th, 2013 on the grounds of termination without just cause, was followed by the filing of the second grievance on December 19th against the management’s decision to promote Edward Nigma. The following is a rationalization demonstrating the company’s position on arbitrary remediation.

## **Just cause**

The Company would like to clarify the concept of just cause, seeing as just cause is a prominent aspect of Kent’s grievance. Just cause is defined as the “ legal term that states information about an employer who is justified in terminating an employee without providing reasonable notice or payment instead of the notice.” The Company cites disloyalty, violence, and insubordination as the main motives for the grievor’s immediate termination. The Company would also like to reiterate that union activity is not a factor to Kent’s dismissal. As previously stated, Kent was informed by a reliable source, that his union involvement or promotion decision was a non-factor to terminate his employment.

## **Grievance A**

Based on the grievance from December 6th, 2013, company claimed a without just cause release of Clark Kent. The grievance was filed four days after the incident occurred on December 2nd 2013. The union argues that off-duty conduct should not be taken into consideration when evaluating Kent's performance. Kent work was not hindered as a result of the incident. The Company keeps the decision about terminating Kent on the basis of the following four arguments.

### **Argument 1: Off-Duty Conduct**

Grievance " A" was filed on the grounds that Kent's behaviour should be discounted, as he was off duty during the time of the incident, and should therefore not be held accountable for his inappropriate conduct. The Company argues that because the purpose for the trip was business-related, all actions taken during that period should be considered under company time. The Company paid for all expenses at the time, which solidifies the argument that the conduct performed at the time must be held accountable by employees. Conference early room was left by Kent upon receiving the news of the promotion. The absence of promotion proceeded to inappropriate act and room vandalism. This demonstrates disrespect to conference members, but also shows a blatant disregard for company orders. Kent was acting unquestionably as an employee during his work time, and behaved undeniably inappropriate.

## **Argument 2: Insubordination**

The argument presented by The Company with regards to just cause for the termination of Kent surrounds insubordination. The Company feels as though Kent committed blatant insubordination at the pharmaceutical conference. The fact that an employee has been insubordinate, was proved by three elements:

- 1) There was a clear order.
- 2) The order was given by a person in authority
- 3) Order disobedience

The Company was explicit in its instructions at the industry conference. Instructions were given by Kent's superior, and upon receiving the news that he had not been promoted, Kent disregarded his instructions and walked out of the meeting. In comparison to the similar case of *Taback vs. Treasury Board* [1982] which concluded in the greivor's termination due to insubordination being upheld. Asking an employee to attend a meeting is not unethical, nor is it illegal, insubordination was inarguably committed.

## **Argument 3: Vandalism and Violence**

Violence is one of the justification facts for the immediate termination of Clark Kent. Punching, kicking and breaking furniture in his hotel room clearly fall under the category of vandalism. This actions can be considered as "action[s] involving deliberate destruction of or damage to public or private property." Kent's violent tendencies made others feel threatened and unsafe. According to the Ontario Health and Safety Act (OHSA), employers and employees have a joint duty to ensure that the workplace is free from

hazards [clause 25(2)(a)]. This includes creating and maintaining a work environment free from violence. Kent “ fit of rage” is construed as a “ human hazard,” making him eligible for immediate termination. Similar to the case of Tenaris Algom Tubes vs. Greivor [2005], Kent is not granted “ one free violent episode,” as is being suggested by the grievor. OHSa stated that Kent actions fall under the category of workplace violence. Kent’s outburst occur within the hotel room, according to OHSa, it is deemed as a company property.

#### **Argument 4: Disloyalty and Breach of Trust**

The Company would like to state disloyalty and breach of trust as just cause for

Kent’s termination. Kent’s actions at the conference are considered as misrepresentation of company values. The unprofessional attitude demonstrated by Kent upon receiving the phone call regarding the promotion, make him to go against the Company deems as acceptable behaviour in a work environment. Kent incurred additional unnecessary expenses to The Company by causing damages to the hotel room. Kent’s behaviour parallels that of the grievor in the cases of Mark Kingsbury vs. Drinking Water Services Department [2001] where the grievor caused monetary damages to the company and was terminated. A potential opportunity cost was also expensed, as there were valuable contacts at the conference that may have seen Kent act in an unprofessional manner. Kent’s public outburst and his actions clearly “ harm the reputation of a business.” Kent is expected to demonstrate a high level of professionalism.

These standards were simply not met. Kent showed no remorse for his actions. No apology, explanation or justification was presented, leading in a conclusion that Kent actions were not erroneous. Bearing similarity to the case of Edson (Town) and C. U. P. E., Local 2833, [2009], a misconduct of the transgression to management, is considered as a breach of trust, and may result in immediate termination.

## **Grievance B - Seniority and Promotion**

A vacancy for the position of the vice president of research and development opened after Lucius Fox was appointed to serve as the Chief Executive Officer (CEO) of the company. After an ad-hoc staff meeting on December 2nd, 2013, Edward Nigma was appointed as the vice president of research and development. Seventeen days after the announcement, Clark Kent filed the second grievance against the promotion of Edward Nigma on December 19th, 2013. According to the Article 8, Section 1 of the Collective Agreement, the employee or employees shall file the grievance in writing not later than fifteen (15) calendar days after the date of the event, upon which the grievance is based, or, the date on which such event reasonably came to be known. Clark Kent's second grievance was not filed in the proper time frame, and therefore, should be held as null and void for any legal action.

In adherence to the Collective Agreement, the management posted the vacancy internally, and this suggests that the application process was open to every competent individual within the organization. Moreover, as the promotion decision was made through an ad-hoc staff meeting where all the staff members were involved in the process of selection of the person

befitting the position, it is evident that the application process was clear, transparent, and equitable.

Evaluating the two applicants' overall performances, there remains no doubt that Nigma's past performance has been more consistent than Clark's. In fact, there is clear evidence suggestive of the improvement in Nigma's performance, while Clark's performance has deteriorated over the past year. Personal relationship issues do not qualify as a reasonable excuse for his declining performance. In fact, Clark's inability to manage minor distractions indicates his lack of professional responsibility for the company. On the other hand, Nigma's promising performance trend shows greater development potential as well as an eagerness for future improvement.

Moreover, Edward Nigma has served in the company for a longer duration, which allowed him to accrue greater seniority over Clark. Under a competitive clause, seniority determines the outcomes of competition when the applicants' skills and abilities are relatively equal. Hence, the promotion is justified as an equitable form of reward for Nigma's loyalty, long service, and ever-improving performance.

Clark Kent's vindictive actions following the promotion decision further confirmed the management's correct assessment of his competencies. His outrageous offense in the hotel suite suggests that Clark Kent does not necessarily possess sufficient emotional intelligence and stability required to maintain a professional composure, which must be the principal trait of a vice president.

## **Union's Argument**

The union states that the Griever was disregarded for the promotion and wrongfully terminated for his actions at the conference, claiming that the Griever's vindictive response was an off-duty incident that did not affect his work output and performance.

The grievances include concerns based on the grounds of non-progressive discipline and disregard for previous performance. In the Griever's circumstance, he was terminated on the basis of one infraction. The progressive corrective approach to discipline applies only to less severe infractions that have a rehabilitative potential. This exemption from progressive discipline is validated by the Article 6, Section 2 of the Collective Agreement, which states that " Employees shall adhere to the principles of progressive discipline except for major cause infractions, which may lead to immediate discharge or suspension on the first offense without resorting to progressive discipline."

The union believes that progressive discipline was not meted out and that the termination of the Griever was unjustified and inappropriate. However, the company believes that since the company has arranged and paid for the conference in which the Griever was a representative, he was on duty.

Besides, the Griever had also taken a departure from the conference earlier than usual, indicating insubordination, as he was to remain in the conference throughout. He also perpetrated violent actions in the hotel that projected a negative image of the company. Furthermore, the Griever did not keep his actions contained within the unit; he also threw a mattress outside the window, posing a threat to the hotel occupants who were standing under the



window.

Taking an action against the Griever's violent behavior, the company dismissed him on the grounds of misrepresentation not only of the company values, but also for the commission of several other serious infractions, including the violation of the Duty of Loyalty to the company as well as Insubordination. Taking all these reasons into account, the Griever's immediate termination appears justified.

Furthermore, there was no disregard shown to the previous performance in both the internal promotion selection process and in the warranting of the termination. The company posits that its action is in absolute conformity with the standards of the selection process and the promotion of candidates in a unionized setting. Nigma had 8 years of more seniority with the company and had similar skills as the Griever, and therefore, giving Nigma a promotion was unanimously deemed fair.

The company claims that it has paid a considerable amount of thought to the warranting of the termination of the Griever, who was consistent with serious misconduct as has been indicated in the Collective Agreement too.

Furthermore, he expressed no signs of remorse exhibiting low rehabilitative potential. His reinstatement would add further complications and give rise to a tension-ridden situation with the management as well as his fellow colleagues. The company further asserts that the Griever's good performance will serve him as a role model to others both in and out of the company and should be held to a higher standard of behavior.

## **Mitigating Factors**

The company would like to address the severity of the issue, taking into account the absence of the mitigating factors behind the Griever's case. The company believes that the Griever on account of the serious offense of misconduct and non-admission of the same should be terminated with no backpay. The union's case rebuts several mitigating factors against termination, including rehabilitative potential, seniority, provocation, and disciplinary record. The company believes that due to the lack of remorse for his actions, the Griever does not exhibit any sign of rehabilitative potential. In the case of Bell Technical Solutions ("BTS") vs. The Communications, Energy and Paper workers Union of Canada (CEP) (2012) too, the Grievors failed to demonstrate awareness of their faults, and the arbitrator decided to rule in favor of the immediate termination due to the lack of rehabilitative potential. This case also demonstrated that abrasive management style and tense workplace atmosphere were not reasonable enough to cause provocation. Therefore, the promotion of Nigma cannot be cited as a justified reason for the Griever to feel provoked for damaging property and maligning the company's reputation. This kind of behavior is indicative of the Griever's violent personality that could threaten the well-being of other employees in the workplace. Due to the deliberate nature of the Griever's actions, the company considered immediate termination befitting the offense. Throwing a mattress outside the window was enough to draw the attention of the company as the hotel staff could have leaked the news outside, or the conference attendants could have been outside and got injured. In the case of the City of Ottawa vs Ottawa-Carleton Public Employees Union (2014),

despite the Griever's seniority, the arbitrator upheld the decision for termination on the basis of the premeditated and deliberate nature of the actions.

## **Resolution**

Possible resolution agreements include the reinstatement of the Griever, or monetary rewards. The company believes that the arbitrator should uphold the management's decision of immediate termination with no backpay. The reinstatement of the Griever would not be a practical solution, because it will show as if the company condones this kind of gross misconduct, thereby setting a bad example for the fellow employees. It would imply that the company is inconsistent with its own disciplinary actions. The Griever needs to be disciplined in such a manner because of the company's regard for his status and performance. The Griever is a well-respected member of a high profile corporation. His reinstatement would also fuel his tension with Nigma. The Griever had not expressed any remorse for his actions and did not report the damages to the management, causing a breach of trust and loyalty, and because of this, the company maintains that he should not be rewarded any monetary compensation on top of the costs already incurred by the company for the damages he inflicted upon the hotel. Finally, the company asserts that the termination decisions are usually final, except in the case of public sector jobs. This is because it is assumed that the position has already been filled during the Griever's time away from the company, and since the relationship between the company and the Griever has also frayed, his reinstatement would not be favorable to the organization.

## **Concluding Remarks**

The company maintains that the two complaints lodged by the International Association of Pharmaceutical Workers should be dismissed on the grounds that Wayne Biotech had just cause to take the action of immediate termination, because of the severity of the offenses committed by Clark Kent, who not only violated the company's terms and policies by showing violence and thereby sabotaging the company's reputation, but also displayed an attitude of utter disloyalty and insubordination to the company. Due the absence of any sign of remorse in Clark's attitude, the company recommends the decision of immediate termination to be upheld by the arbitrator so that the Griever cannot be reinstated to his position nor compensated for the dismissal. However, in recognition of Clark Kent's past performance, the company agrees to serve as a positive reference to his future employment searches, if such need arises.