

known to the workers; (2) was the application of the rule nondiscriminatory; and (3) were there extenuating circumstances?

Reasonableness of Rules.—A rule that provides for automatic discharge after a single garnishment is not regarded as reasonable by arbiters, Fisher finds. While rules specifying "two times and out" have been okayed, many arbiters seem to favor withholding the discharge penalty until the third garnishment. One arbitrator gave this explanation:

"Many companies have established the practice of terminating employees after their third wage or salary deduction. This may seem harsh to those who are perpetually in financial difficulties; but at least the employees are put on notice; they are counseled and . . . warned that future financial involvement of this kind will result in discharge." (44 LA 87).

Arbiters invariably insisted that employees be amply warned of a garnishment rule, Fisher notes. Thus, discharges were invalidated where (1) the company had not posted or otherwise disseminated its garnishment rule (14 LA 787); (2) no preliminary warning was given prior to a "final" warning (46 LA 822); or (3) the contract, which contained a new and stiffer rule, had not yet been printed (43 LA 1268).

Equal Treatment.—Application of a policy against garnishments must be regular and predictable, with the same corrective escalations of discipline applied to all employees if arbiters are to sustain a discharge, Fisher says. Thus, a discharge for a third garnishment was set aside where it was shown that in six similar cases, only three had been discharged. (27 LA 160).

But a too mechanical observance of a disciplinary schedule also may be rejected by an arbiter. Where the policy called for a warning for a third garnishment and discharge for a fourth, a company should not have discharged an employee when the third and fourth garnishments arrived on the same day, an arbiter said. (37 LA 85).

Extenuating Circumstances.—In garnishment cases, arbiters reinstate more workers because of extenuating circumstances than for all other reasons combined, Fisher notes. Extenuating circumstances include discharging the debt through bankruptcy, speedily lifting it prior to discharge, lack of knowledge of the debt, a good work record, or loss of income due to chronic layoffs.

One arbiter, Benjamin Roberts, noted in a recent address that discharges for garnishment are being given a closer look by arbiters these days.

A discharge may be set aside, Roberts said, if it appears that the employee had found himself in unusual and difficult circumstances not necessarily of his own making. If extenuating circumstances are found, reinstatement may be directed on the condition that there be no further garnishments and that the existing liabilities be liquidated as soon as possible.

State legislatures currently are showing an interest in this subject and are considering restricting management's right to discharge for garnishment. Hawaii, for example, has adopted such a law.

GARNISHMENT STILL BIG THREAT TO WORKERS IN DEBT

Despite the determined fight of unions to prevent the firing of workers whose wages are garnished, the worker in debt whose wages are garnished more than once or twice is in grim danger of losing his job.

A study of widespread arbitration cases published in the current Monthly Labor Review by the U.S. Department of Labor comes to the conclusion that garnishment—although an off-the-job "offense"—has come to be regarded as having equal status with such on-the-job offenses as fighting, drunkenness or theft.

Author of the study, Robert W. Fisher, notes that unions "do not accept discharge of workers for garnishment with equanimity primarily because such charges smack of employer control of the employee's private life—the philosophical root of the questioning if discharged for garnishment."

He further notes, however, that in the absence of protective legislative or a specific clause in the collective bargaining agreement, most arbitrators accept too frequent wage garnishment as a legitimate "just cause" for discharging a worker.

As a rule, Fisher found, arbitrators took the position that garnishment represented a burden on employers who are subject to harassment by creditors, the necessity for keeping special accounts as well as being called into court under certain conditions.

Having accepted garnishment as a "just case" for discharge in principle, most arbitrators seek to lay down mitigating conditions. One arbitrator stated that