

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MADISON CONCOURSE HOTEL

and

SEIU LOCAL NO. 1, AFL-CIO, CLC

Case 1

No. 61739

A-6036

(Halink Grievance)

Appearances:

Melli, Walker, Pease & Ruhly, S.C., by **Attorney Daniel D. Barker** and **Attorney Angela Black**, 10 East Doty Street, P.O. Box 1664, Madison, WI 53701-1664, on behalf of Concourse Hotel.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea F. Hoeschen**, 1555 North Rivercenter Drive, Suite 202, Milwaukee, WI 53212, on behalf of SEIU Local No. 1.

ARBITRATION AWARD

According to the terms of the effective labor agreement, entered into January 1, 2002, by the Madison Concourse Hotel (Hotel) and Service Employees International Union, Local No. 1, AFL-CIO, CLC (Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding a one-day suspension issued to Governor's Club bartender Jackson Halink. WERC Arbitrator Sharon A. Gallagher was designated. Hearing in the matter was held on February 4, 2003, at Madison, Wisconsin. A stenographic transcript of the proceedings was made and received by the Arbitrator on February 17, 2003. The parties agreed at the hearing to submit their initial briefs 30 days after their receipt of the transcript for the Arbitrator to exchange. Ten working days after receipt of the initial briefs, the parties agreed to postmark their reply briefs, if any. Initial briefs were received on April 4, 2003. The Union did not submit a reply brief. The Hotel's reply brief was received on April 21, 2003, whereupon the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties stipulated that the Arbitrator should determine the following issues:

Was Jackson Halink suspended for just cause? If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 7- DISCHARGE AND DISCIPLINE

- 7.1 **Just Cause.** The Employer shall have the sole right to discharge, suspend or otherwise discipline for just cause any employee who has completed his/her probationary period, subject to the grievance procedure. Prior to any disciplinary meeting, employees will be advised of their right to have a Union Worksite Leader present.
- 7.2 **Progressive Discipline.** Any employee, except for probationary employees, may be disciplined for just cause. Ordinarily, such discipline would include the sequence of verbal warning, written warning, suspension and termination. Certain actions such as gross negligence, sabotage, gross insubordination, theft, drunkenness on duty, or physical altercations, may require immediate progression to discipline including suspension and termination. In all cases, written notification shall be provided to the employee which will indicate the current step of the disciplinary process and the reasons for the disciplinary action. General Counseling may, but need not, also be used as a basis in the process of correcting and improving employee performance.
- 7.3 Each employee has a right to meet with his/her Union Worksite Leader when an employee believes that he/she has a grievance. The Employer shall permit a Union Worksite Leader a reasonable amount of time on regular duty status to process grievances and consult with appropriate supervisors and Management officials. The Union will use its best efforts to ensure that the Union time is not abused. The employee and Union Worksite Leader will obtain prior approval from their supervisor for release for such time at a minimum. Such approval only shall be allowed where that meeting cannot be held on off-duty time.

7.4 Warning Notices Cancellations. Written record of disciplinary notices other than a suspension or discharge shall not be used as basis for discipline after a period of one (1) year for full-time employees and two (2) years for part-time employees provided there have not been other infractions of similar significance (i.e., tardiness is a different significance than insubordination).

ARTICLE 9 - MANAGEMENT RIGHTS

It is understood that the Management and the direction of the working force is vested exclusively to the Employer except as specifically provided in the other articles of this agreement. The Employer's rights include but are not limited to: the right to hire, demote, suspend, or discharge; retire, layoff, promote, assign or transfer employees to any job or any work, anytime or anywhere; to increase or decrease the working force; to determine the number of employees assigned to any work or any job; to define the hours of work per day or week; to make work rules for the purpose of efficiency, safe practices and discipline; to establish performance standards and to review employees under these standards; to determine the equipment to be used; to make technological change; to determine the number and location of its operations; to move, close or liquidate its operations in whole or in part; to separate or reassign employees in connection with said moving, closing or liquidation; the right to transfer, to subcontract work provided no current employee may be laid off as a result of subcontracting; to establish new jobs and preliminary wage rates for them (subject to subsequent negotiation with the Union over wages for such new jobs); to determine the duties and production standards; to combine jobs; to eliminate classifications of work; to require overtime work; and to select employees for overtime.

Issues that arise regarding past practices that have developed with or without the Employer's knowledge shall be dealt with on a case by case basis through meetings between Management and the Union unless included elsewhere in the contract.

Nothing in this article shall abrogate or alter any other article of this Agreement.

RELEVANT WORK RULES

Relevant portions of the Employee Handbook appear below. The Handbook was effective March 1, 1997, and edited April, 2001.

. . .

Union Represented Employees

This is a general publication being prepared for all employees. It is possible that at times a contradiction may arise between an item in this handbook and an item in your collective bargaining agreement. If such a contradiction does exist, the terms in your collective bargaining agreement will govern without nullifying any other item in this handbook.

...

Termination of Employment

It is the policy of the Hotel to terminate employment consistent with the employment-at-will doctrine because of an employee's resignation, discharge, or retirement; the expiration of an individual employment contract; or a reduction of the work force. Discharge can be for no reason or for any reason not prohibited by law. In the event an employee resigns, two weeks written advance notice is requested.

...

Employee Conduct

It is the policy of the Hotel that certain rules and regulations regarding employee conduct are necessary for the efficient operation of the Hotel and for the benefit and safety of all employees.

Listed below are some of the rules and regulations of the Hotel. This list is not all-inclusive. Types of behavior and conduct that the Hotel considers inappropriate and which could lead to disciplinary action up to and including immediate termination of employment without prior warning, at the sole option of the Hotel, include, but are not limited to the following:

- a.) **Insubordination** or the refusal by an employee to follow management's direction concerning Hotel related matters.
- b.) Disrespectful or **discourteous conduct** to guests, co-workers, supervisors, or other persons, including the use of profanity or abusive language.
- c.) Reporting to work intoxicated or **under the influence** or in possession of controlled substances or alcohol. (See Substance Abuse Policy, page 9)
- d.) Violating the Hotel's **No Harassment Policy**. (See No Harassment Policy, page 6)

- e.) Failing to perform appropriate work or **job assignments** satisfactorily and efficiently. Unauthorized sleeping, apparent sleeping or inattention during work time.
- f) The possession of firearms or other **weapons** on Hotel premises or while off the premises in performance of employee duties.
- g.) **Coercion**, intimidation, threats or the use of physical force against guests, co-workers, supervisors or other persons.
- h.) **Theft**, misappropriation, unauthorized removal, destruction, defacement or misuse of Hotel property or of another employee's or guest's property. This includes making long distance telephone calls from non-pay phones without proper approval.
- i.) Failing to exhibit a neat and business-like **appearance** and high degree of personal cleanliness at all times. Failure to wear prescribed uniform and name tags if applicable. Neglecting to keep uniform clean and in reasonable condition. (See Appearance Policy, page 10)
- j.) **Smoking** in other than designated areas at designated times.
- k) **Unauthorized presence** at guest functions and in guest areas, or on premises including guest rooms, fitness areas or food and beverage areas when not scheduled to work.
- l.) **Gambling** on Hotel property.
- m.) **Falsifying** employment or other Hotel records.
- n.) Disregarding Hotel **safety and health** policies. (See Safety and Health, page 10)
- o.) Unauthorized **soliciting** or distribution of literature on Hotel property during work time in work areas.
- p) Making or publishing false or **malicious statements** concerning a guest, employee, supervisor, ownership, the Hotel or its services.
- q.) Disclosing or unauthorized use of any Hotel information including any records, files, guest lists, financial records, vendor/supplier lists or employee records which the Hotel deems confidential.

- r.) Any other action or inaction of an employee on or off duty which, in the sole opinion of the CEO/General Manager is a conflict of interest or detrimental to the operation or reputation of the Hotel or to the safety and well-being of its guests or employees.

If your performance, work habits, attitude, conduct or demeanor becomes unsatisfactory in the judgment of the Hotel, based on violations either of the above or any other Hotel policies, rules, or regulations, you will be subject to disciplinary action up to and including immediate termination.

BACKGROUND

Jackson Halink has been employed by the Madison Concourse Hotel since approximately 1983. In August of 2002, Halink was employed five days a week (Tuesday through Saturday) as the bartender in the Governor's Club Lounge from 4:30 p.m. to 10:30 p.m. The Governor's Club is a concierge's level service which is offered by the Hotel. Guests pay more for their rooms on three floors of the Hotel, which rooms have enhanced decoration, and guests are given access to the Governor's Club Lounge (by use of their room keys) for approximately six hours every evening where free alcoholic and non-alcoholic beverages are provided as well as hors d'oeuvres and desserts. Governor's Club guests also receive extra services in the Hotel, including room service and brunch in the morning. Approximately 500 patrons per week use Governor's Club services at the Hotel.

The Hotel has solicited customer comments through comment cards since at least 1998, which Governor's Club and other Hotel guests are encouraged to fill out prior to departure. The Hotel receives approximately 125 comment cards per month but only perhaps 2 letters per month from guests who have stayed in the Hotel. The Hotel maintains customer letters and comment cards in its computer data base and analyzes information therefrom in an effort to give better service to its customers.

Since approximately February of 2000, the Hotel has employed a Customer Service Manager, Stephanie LaBella-Luke (hereafter Luke). Luke's primary duties are to receive customer comment cards, letters and complaints and try to deal with and resolve these. Luke stated that she regularly makes personal inquires into negative comment cards by calling customers and trying to confirm the details listed on their comment cards to determine whether their complaints are justified. When Luke finds that a customer complaint is justified, she is authorized to adjust customer bills, send gift certificates (worth approximately \$150 each) and to offer guests complimentary stays in the Hotel.

There is generally only one bartender on duty each night at the Governor's Club Lounge. The Lounge is a key entry facility, where only Governor's Club guests may enter and receive complimentary drinks and food during the hours that the Lounge is open. Over the

period of his employment, Halink has received 11 “Concourse Kudos Awards” which are based upon positive customer letters and comment cards, which indicated that Halink’s work was outstanding during the stay of each customer. Halink also received a “Golden Key Award” for his civic contributions to the “Meals on Wheels” program in October of 1999. Furthermore, Halink received three “Spirit of Service Awards,” two in March of 2002 and one in January of 2001. 1/ In addition, the Hotel has received four positive independent letters from guests who stayed in the Hotel after they completed their stay indicating that Halink’s work was excellent. These letters were received in 1999 and 2000. (One letter was undated.) There were also many positive comment cards received by the Hotel specifically naming Halink as having performed excellent work, which were written by guests who stayed at the Hotel between November, 2002, and February, 2003.

1/ The “Spirit of Service Award” can be given by Hotel employees to other Hotel employees whose work the former perceive to be excellent.

The Hotel offered documents detailing past disciplinary actions taken against Halink that in October, 1997, Halink received a written warning and in November, 1997, Halink received verbal and written warnings both for rudeness/treatment of guests in the Governor’s Club. On February 29, 2000, Rooms Director Woodward gave Halink a written warning and a suspension for rudeness to guests. On April 25, 2000, Woodward reduced the discipline he had given Halink on February 29th from a suspension to a verbal warning, based upon Woodward’s belief that Halink had evidenced remorse for the circumstances that led to the suspension and that Halink’s behavior had been much improved. 2/

2/ The parties are at odds whether prior discipline may be considered herein if the prior discipline occurred more than one year before the instant situation, pursuant to language contained in Article 7 – Discharge and Discipline. This issue will be dealt with in depth herein in the Discussion section.

On April 20, 2002, Mr. and Mrs. Metcalf and two other couples were in the Governor’s Club Lounge when Halink admittedly told Mrs. Metcalf to “shut-up,” and later told her to “shut the fuck up.” Halink explained herein that the couples were drinking heavily and that Mrs. Metcalf had used bad language to him before he admonished her in the same language in order to get her to quiet down. Halink stated that the Metcalf party had been loud and boisterous while in the Governor’s Club and were disturbing the other approximately 50 guests. 3/

3/ At the instant hearing, Halink confirmed that the handwritten explanation of his actions which he submitted to the Hotel on May 2, 2002, was accurate regarding the Metcalf incident. In his May 2, 2002 statement, Halink admitted using the words that the Metcalfs alleged he used towards them but he gave the explanation stated herein for his actions.

The Hotel received a comment card from the Mr. and Mrs. Metcalf which detailed the incident with Halink, including quotes of the language Halink used. Luke called Mr. Metcalf and spoke to him in detail about the incident. Thereafter, on April 30, Hotel General Manager Cal Whorrell gave Halink a verbal warning/counseling regarding the Metcalf incident. At the counseling session, Halink admitted making the statements attributed to him but he was very apologetic. Whorrell stated herein that Halink promised him that he would follow Hotel rules and policies in the future and indicated that he knew that the next incident on his part could result in termination. Halink did not file a grievance regarding this verbal warning/counseling. The Hotel ultimately adjusted the Metcalf's bill, giving them three free rooms for one night for three couples in the Governor's Club.

On June 20, at approximately 5:00 p.m., Night Hotel Manager Mike Barr received a verbal complaint from Hotel guest Mrs. Rosen, stating that Halink had been rude to her and her two sons at the Governor's Club Lounge when Halink denied service to her sons who were under age 21 and ineligible to drink at the Governor's Club Lounge. Barr then went to the Governor's Club and spoke with Halink about Mrs. Rosen's complaint. At this time, there was one guest in the Lounge watching television approximately 15 feet away from Barr and Halink. When Barr inquired about Mrs. Rosen's complaint, Halink slammed the newspaper down that he had been reading and referred to Mrs. Rosen as "that fucking cunt." Barr noted that the guest then present in the Club looked up at the time Halink made this statement and looked toward he and Halink, but there is no record evidence to show that the customer, in fact, heard Halink's comment.

Barr immediately reported this incident to Jeanne Doege, Human Resources Director, by calling her at home. On June 21, 2002, Rooms Director Woodward gave Halink a written warning concerning this incident, citing the verbal warning given by Whorrell on April 30, 2002, as previous corrective action. In the written warning, Woodward stated "filthy and disrespectful comments about guests, employees or in general will not be tolerated in any Hotel public areas." 4/ Halink grieved the issuance of the written warning dated June 21, 2002. In his testimony herein, Halink admitted using the words that were attributed to him by Barr, but stated that he had spoken in a quiet voice and he believed that the guest in the room had not heard him.

4/ Woodward did not seek any information from Halink before he issued Halink the written warning described above.

On August 3, 2002, Halink was the bartender at the Governor's Club Lounge. That evening two ladies, Lynn Secrist and Janis Strupp, came into the bar according to Ms. Secrist's comment card, they asked Halink to serve them two Bud Lights. Halink told them that the Governor's Club did not have any Bud Light. At some point, the ladies told Halink that they

had some Bud Light in their room and Halink told them "Fine. Go back to your room." Secrist stated on her comment card that she and Strupp were "a little shocked by Halink's comment." In his testimony in this case, Halink admitted making the statement attributed to him by Secrist.

Luke interviewed both Secrist and Strupp over the telephone to confirm the details of the comment cards both of them submitted after their stay. 5/ Luke requested that both Strupp and Secrist submit letters regarding the incident to the Hotel and both women did so. Secrist's letter confirmed the statements she made on her comment card. On her separate comment card, Strupp stated ". . . Jackson of the Governor's Club was the unfriendliest and unprofessional employee I have ever come across in a Hotel atmosphere. He ruined most of the entire evening for us. We were unable to take advantage of the beverages/appetizers and atmosphere of the Governor's Club." Strupp also stated that she did not feel she could provide a positive recommendation for anyone inquiring about the Madison Hotel.

5/ Notably, Secrist's comment card indicated the conversational exchange described above but Strupp's did not. However, Strupp stated on her comment card "we were snapped at and treated so unprofessionally . . . we didn't take advantage of beverages/appetizers!" referring to Halink in the Governor's Club Lounge. Strupp also stated that the staff of the Hotel was "wonderful, other than Jackson in the Governor's Club."

On August 13, 2002, following the above investigation of the incident, Rooms Director Woodward issued Halink a one-day suspension prior to his beginning work on that date. 6/ The counseling form accompanying this suspension stated:

This is a critical point for Jackson. Another such incident for [sic] disrespectful service towards a guest will result in the final stage of disciplinary action and may include termination. 7/

As a result of its investigation of the incident, the Hotel sent Secrist and Strupp gift certificates (worth \$150 each) to use in the Governor's Club in the future. Neither Secrist nor Strupp had used their certificates as of the date of the instant hearing. On August 19, 2002, the Union filed the instant grievance.

6/ Again, Woodward did not seek any information from Halink before he administered the discipline on August 13th.

7/ In his testimony herein, Halink admitted that he was familiar with the Hotel's Employee Handbook and the rules it contained.

POSITIONS OF THE PARTIES

The Hotel

The Hotel noted that the contract requires just cause for suspension of employees and that the Hotel specifically reserved the right to establish employee rules regarding discipline. Given this, the Hotel noted that Halink knew of its rule against disrespectful/discourteous conduct toward guests and employees and that profanity and abusive language would not be allowed. Halink also admitted that he had made the comments to the various guests in the past which led to his discipline, including the specific comments which led to his suspension. Here, the Hotel urged that rudeness to guests would constitute just cause for discipline and that Halink's comment to Secrist and Strupp was rude and hostile and caused them to file two negative comment cards and to write letters criticizing Halink's service during their stay.

In addition, the Hotel argued that written guest complaints constitute appropriate evidence, despite the Union's arguments to the contrary where, as here, Halink essentially admitted making the statements attributed to him. In addition, the Union admitted in the hearing, as well as in its brief, that Halink was terse and impatient with Secrist and Strupp. The Hotel noted that not all comment cards have resulted in discipline and that in fact on at least one occasion, the Hotel reduced discipline for Halink where he explained the circumstances and the Hotel's investigation indicated that the complaint was unfounded. In this case, the Hotel noted that Halink had been given the opportunity to respond to the discipline, and he choose not to do so in the meeting which led up to his suspension.

Even if there were a lack of malicious intent on Halink's part, Secrist and Strupp took Halink's statement in the worst possible way. These guests' reasonable reaction to Halink's statement justified the discipline meted out against him. The Hotel argued that Halink's past positive guest interactions do not excuse his rude behavior on other occasions. In addition, the Hotel noted that there was no evidence in the record, contrary to Halink's assertion, that anyone at the Hotel was "out to get" Halink.

Furthermore, the Hotel argued that the undersigned should consider prior discipline meted out against Halink pursuant to the language of the labor agreement because Halink's prior conduct was similar in significance to the activity which led to his suspension in this case. Even if prior discipline is not considered by the Arbitrator in this case, the Hotel argued that just cause existed for it to issue Halink a one-day suspension for his comment to Secrist and Strupp.

Finally, Halink's length of service does not require the Arbitrator to exert her authority to decrease the discipline meted out against Halink in this case. Here, Halink had been rude three times in a five-month period; and the Hotel had to give away free services or face losing valued customers and future business. Therefore, the Hotel urged that the grievance should be denied and dismissed in its entirety.

The Union

The Union contended that the Hotel failed to submit credible evidence that Halink was rude to patrons. In this regard, the Union noted that the Hotel relied entirely on hearsay, which should not be sufficient to support the discipline given. In addition, the Union asserted that Halink's testimony should be credited as he was the only witness who testified who was actually present during the incidents involved in this case. Because Luke's questioning of Secrist and Strupp was not of the level of cross examination, and because Secrist and Strupp's written comments differed from Luke's recollection thereof and Luke took no notes of her conversations with Secrist and Strupp which could be compared to her recollection and which would have shown the type of questions she asked and the answers given by the guests, this evidence must be disregarded by the Arbitrator.

The Union noted that Strupp's account contained no specifics of the incident with Halink and that Secrist's account did not have very much in the way of detail, making Halink's account largely un rebutted by the evidence herein. Thus, the Hotel merely assumed the customers' accounts were correct and indicated wrongdoing by Halink, which the Union contended showed that the Hotel was not interested in getting at the truth underlying the incident.

The Union asserted that as a general rule, patron complaints of rudeness by Hotel employees should not be the proper basis for discipline unless there are aggravating circumstances involved. The Union pointed out that Halink probably served about 12,000 guests per year as bartender in the Governor's Club, making a few negative comment cards almost a zero percentage of the customers served. The Union contended that it is unrealistic for the Hotel to expect that even its best employee can remain free from subjective complaints by customers who are under the influence of alcohol. The fact that the Hotel was unable to demonstrate a loss of a major contract or any kind of real business loss, any threatening activity toward a customer or sexual harassment of a customer (i.e., aggravating circumstances), shows the essentially minor nature of Halink's misconduct in this case.

The Union introduced many positive comment cards and awards which Halink had received and asserted that the customer complaints by Secrist and Strupp were "aberrations" from Halink's normally exemplary conduct and service. As Secrist and Strupp's complaints were neither credible nor egregious, they should not form a basis for the Hotel's potential termination of Halink.

The Union also contended that Article 7.4 of the contract does not allow use of prior discipline against Halink (prior to April 30, 2001). The Union asserted that the Hotel's reading of Article 7.4 is "ridiculous." The Union also disputed the Metcalf incident on its facts, and referred the Arbitrator to Halink's May 2nd statement for the truth of the matter. In addition, in regard to the Rosen comment, the Union noted that this was a different kind of alleged misconduct, as no customer complaint was ever lodged, and Halink's conduct, at most, constituted general misconduct.

As the two incidents which occurred in 2002 did not undermine Halink's good work record or show him to be a problem employee and because Halink had engaged in no dishonesty or other egregious misconduct, the incident of misconduct involved in this case should not undermine Halink's credibility herein. Therefore, the Union argued that the grievance should be sustained and Halink made whole and his record expunged.

In Reply

The Hotel

The Hotel contended that the Union's argument that Halink should not be expected to perform perfectly in servicing guests is untenable in the highly competitive hotel field. In this regard, the Hotel noted that Halink himself admitted on cross examination that the Hotel should be able to expect 100% positive feedback regarding Hotel employees' conduct. Halink's good conduct in the past does not require that he receive a "pass" on discipline herein. The Hotel noted that Halink admitted making the statements attributed to him by Secrist, Rosen and the Metcalfs and that the Union admitted in this case that Halink had been terse and impatient with Secrist and Strupp. Therefore, the Union's contention that the allegations of these guests received by comment cards, mail and telephone should be discounted cannot prevail.

In these circumstances, the Hotel argued that it was not necessary to subpoena guests or to obtain affidavits from them. Thus, all the evidence showed that Halink's comment to Secrist and Strupp was rude. Whether Secrist or Strupp complained to front desk employees would not necessarily mean that such a complaint would have been conveyed to management based upon record evidence showing the Hotel's normal procedures.

The Hotel argued that Halink had ample time to respond to the complaint for which he was suspended and yet chose not to do so, as his Union representatives had received the details of Secrist and Strupp's complaint prior to the counseling session held on August 13th. The Hotel also noted that the Union attempted to argue that the consequences of Halink's misconduct were not severe. However, the Hotel noted that adjusting the Metcalfs' prior bill and offering them three free rooms for one night, as well as giving a free visit to Secrist and Strupp, would amount to \$600 in room fees alone for one night, not including gratuitous services, food and beverages offered at the Governor's Club level.

As the Union has proved by showing the various positive comments received by customers regarding Halink, that Halink is capable of treating guests well and this demonstrates that the Hotel was justified in issuing a disciplinary suspension to Halink to try to improve his conduct toward guests. As the same work rule applies to all three incidents which occurred in 2002, and as the Union failed to show why the Arbitrator should not consider prior disciplinary actions dating back to 1997, for the same rule violations, the Hotel urged that the

discipline Halink received in this case was certainly justified. In any event, even if the undersigned fails to take the 1997 — 2001 discipline into account, a one-day suspension was warranted based on the three prior disciplinary actions in a five-month period in 2002. The Hotel urged the Arbitrator to deny and dismiss the grievance.

DISCUSSION

The Hotel has argued that Article 7, Section 7.4 of the labor agreement requires that the “written record” of three disciplinary notices received by Halink in 1997, 1999 and 2000 must be considered against Halink in reaching this award. Thus, the Hotel has argued that I must construe the meaning of the language contained in Section 7.4 and apply it herein. I disagree. The written notice Halink received along with his suspension did not reference the warnings he had received in 1997, 1999 and 2000. Rather, that notice referenced and relied solely upon the disciplinary actions taken against Halink in April and June of 2000. In addition, Rooms Manager Woodward did not assert herein or in any documentation regarding this grievance that he relied upon or considered the 1997 – 2000 discipline of Halink in deciding to suspend Halink on July 13, 2002. Therefore, I need not and do not decide the meaning of Section 7.4 nor whether the disciplinary notices received by Halink in 1997, 1999 and 2000 could be considered against Halink pursuant to Section 7.4 in regard to the discipline in this case. Thus, no evidence on this point has been considered in reaching this Award.

The Union argued that the Hotel work rules should not apply to Halink because he is a Union represented employee. However, in Article 9 of the labor agreement, the parties have specifically stated that the Hotel has the right “to make work rules.” The Employee Handbook contains a section entitled “Employee Conduct” which contains employee work rules. The Union Represented Employees section of the Handbook expressly indicates that the work rules are only ineffective *vis-à-vis* union employees when the rules contradict the Union employee’s labor agreement. There is no evidence on this record to show any contradiction between the effective labor agreement and the work rules contained in the Handbook. Therefore, I find that the work rules contained in the Employee Handbook are applicable to this case.

The Union has argued that customer complaints relied upon by the Hotel in deciding to suspend Halink on August 13, 2002, were neither credible nor reliable because those complaints constituted hearsay which was unsupported by testimony from the complaining customers. On this point, I note that the record evidence showed that for several years the Hotel has solicited and relied upon customer comment cards and letters it has received in assessing its track record with customers and assessing employee treatment of customers. These comment cards and letters are regularly kept business records which the Hotel has used to both reward and discipline employees (including Halink) in the past. As such, these business records can be considered herein despite the Union’s hearsay objections.

In addition, it is significant that Halink admitted making each statement alleged by the various customers (Metcalf, Secrist) and employee Barr. Halink admitted essentially the surrounding circumstances and conduct he was alleged to have engaged in in each of those

situations. Thus, the Union's hearsay objections lose a great deal of their force. The various statements and conduct that Halink admitted to clearly violate the Employee Conduct section of the Employee Handbook (rule b) as Halink's comments and conduct constituted "disrespectful or discourteous conduct to guests . . . including the use of profanity or abusive language." Thus, Halink's admissions herein bolster a conclusion that the written comment cards and letters of the involved customers were accurate, even if one were to assume Halink's accounts of each incident were entirely true.

I also disagree with the Union's contention that absent aggravating circumstances, rude comments to patrons made by Hotel employees, should not form the basis for discipline. In this regard, I note that the Union cited no cases to support this contention. It is undisputed herein that Halink has an impressive record of awards and positive comments from both his fellow employees and from customers over a period of many years. However, this positive record cannot detract from the fact that Halink admitted making offensive statements about Mrs. Rosen and he admitted making offensive statements to Mrs. Metcalf and to Ms. Secrist and Ms. Strupp, as alleged. In my view, the Hotel need not prove aggravating circumstances — that it lost a major contract or other business or that Halink engaged in threatening actions 8/ or sexual harassment of patrons — in order to hold Halink responsible for comments he chose to make to patrons. In all the circumstances of this case and given the fact that Halink had received warnings in April and June of 2002 for his discourteous/respectful or profane comments/conduct to or about guests, I believe that the Hotel applied progressive discipline (as required by Article 7, Section 7.2 of the labor agreement) and I therefore issue the following

8/ Despite the Hotel's arguments to the contrary, I find that the evidence did not show that Halink, in fact, threatened the Metcalfs with a paring knife while he was cutting lemons and limes on April 20, 2002.

AWARD

Jackson Halink was suspended for just cause. The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin, this 2nd day of June, 2003.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator