

UFCW, Local 1445

and

AAA Case No. 01-17-0004-0330

Stop & Shop Supermarket Company

([REDACTED] -Termination)

For the Employer- Joseph P. McConnell, Esq.
For the Union – Tod A. Cochran, Esq.

In accordance with the Collective Bargaining Agreement (hereinafter "CBA") between Stop & Shop Supermarket (hereinafter "Employer" or "Company") and the UFCW, Local 1445 (hereinafter "Union") this matter came before Arbitrator Harvey M. Shrage under the auspices of the American Arbitration Association. The Parties agreed upon the following issue:

Did the Company have just cause to terminate the Grievant, [REDACTED]?
If not, what shall be the remedy?

A hearing was held in Dedham, Massachusetts on October 25, 2017 and November 3, 2017 at which representatives of the Parties appeared. They had full opportunity to offer evidence and argument. The Parties submitted post hearing briefs that have been fully considered.

Background

[REDACTED] (hereinafter [REDACTED]" or "Grievant") was employed by the Company for 10 years at the time of her termination.¹ [REDACTED] moved to the United States from Egypt in 2004 and her first job was with the Company. The Grievant worked in the deli department during her employment with the Company as a cold foods deli clerk associate responsible for preparing food. The Grievant testified that other than writing

¹ The Grievant testified with the assistance of an interpreter. The Interpreter was employed by Benoit Language Services and was certified to do court depositions.

down the temperature or time for the cooking of chicken she does not involved in paperwork as a part of her job. The Grievant worked 7am-2pm, 5 or 6 days a week. According to the Grievant, after her work day is completed she often purchased items from the store for personal use. The [REDACTED] worked with her at the store, and continued to work at the store after her termination. In addition, [REDACTED] had worked at the store for approximately five years.

Brandon Dellay (hereinafter "Dellay") was the store manager in the Norwood location at all times relevant to this case.² He has been employed by Stop & Shop for 30 years. As the store manager, Dellay was responsible for the operation of the store, all personnel issues, training, hiring, merchandising, sales, payrolls, and profit and loss. Dellay testified that he was informed by Asset Protection and Loss Prevention that there was an issue of abuse of coupons that involved the Grievant and a cashier named [REDACTED] (hereinafter [REDACTED]).³ At the time, [REDACTED] had been employed by the Company as a cashier for approximately 9 months.

The Company has a "Redemption of Coupons" policy. The policy is described in a six page document.⁴ Dellay explained

² The evidence indicates that Dellay was assigned to the Attleboro store at some point after the events at issue in this case.

³ He was also told that Loss Prevention was looking into the conduct of a second cashier.

⁴ In part, the policy provides:

1.1 The purpose of this Policy is to establish procedures for the redemption of all coupons in a consistent and lawful manner and provide an accurate accounting method for all redeemed coupons.

2.0 Policy

2.1 To ensure product availability for all customers, we reserve the right to limit individual coupon quantities.

2.2 The value of the coupon will not be redeemed for more than the price of the item. Coupons have no cash value.

2.4 The physical coupon must be presented by the customer and retained by the cashier.

Example: A coupon presented on a customer's personal device from an App (like Snip Snap) cannot be accepted.

2.9 It is unlawful and a violation of company policy to redeem and/or submit for redemption any coupons in violation of the terms outlined on the coupons. Any Associate who redeems, submits for redemption, or gives direction to submit coupons for redemption in violation of the terms outlined on the coupons will be subject to disciplinary action, up to and including termination.

3.0 Types of Coupons

3.1 A customer may use any combination of a manufacturer coupon, a paper store coupon, and an electronic store coupon towards the purchase of an individual item, up to but not exceeding the value of that item.

3.2 Manufacturer coupons

-
- b. Only one (1) manufacturer coupon may be used on each individual item purchased.
 - c. The exact item stated on the coupon must be purchased in order to redeem the coupon.
 - d. Item substitutions are not allowed.
 - e. The maximum number of identical coupons allowed for each identical item is 16, unless otherwise stated on the coupon.

3.3 Store coupons

a. A paper store coupon, electronic store coupon, and a manufacturer coupon may be redeemed on the same item. If the combined value for the coupons used exceeds the price of the item, the item is free. The manufacturer's coupon will be deducted first, and then the store coupon will be adjusted so that it does not exceed the price of the item.

b. Store coupons cannot be doubled or tripled.

3.4 Free Item & Buy One Get One Free (BOGO) Manufacturer Coupons

a. Free item manufacturer coupons may be used in conjunction with store instant BOGO offers.

• Example: 1st item scanned (manufacturer free coupon applied), 2nd item scanned (store BOGO applied). Both items are free to the customer.

b. Buy One Get One Free manufacturer coupon may be used in conjunction with store instant BOGO offers.

Example: 1st item scanned (manufacturer BOGO applied), 2nd item scanned (store BOGO applied). Both items are free to the customer.

c. To ensure product availability for all customers, we reserve the right to limit individual coupon redemptions quantities.

3.5 Free Item & Two Like Manufacturer Coupons

a. Two Like Manufacturer coupons may be used in conjunction with store instant BOGO offers.

Example: 1st item scanned (manufacturer \$1.00 coupon applied), 2nd item scanned (\$1.00 manufacturer coupon applied), store BOGO applied. Both items are eligible for \$1.00 manufacturer coupon.

b. To ensure product availability for all customers, we reserve the right to limit individual coupon redemptions quantities.

3.6 Catalina Checkout Coupons

a. Our stores issue both manufacturer and store coupons from the Catalina printers at the time of checkout.

b. Our stores accept competitor issued manufacturer Catalina coupons.

Competitor issued Catalina coupons must specifically state "manufacturer coupon" to be accepted.

c. Catalina coupons cannot be doubled or tripled.

d. Item specific manufacturer Catalina coupons cannot be used in conjunction with other manufacturer coupons for the same item.

e. Non product specific manufacturer Catalina coupons may be used in conjunction with manufacturer coupons.

Example: \$1.00 off Produce coupon

3.8 Double / Triple Coupons

a. Stores automatically double manufacturer coupons every day.

Coupons for Lottery tickets, cigarettes, alcohol and items prohibited by law are not to be doubled.

b. In order for a coupon to be doubled, the customer must use their Loyalty card.

c. The Double Coupon Policy does not apply to "free" coupons, Checkout coupons, eCoupons, Act Media coupons (where applicable), or store coupons.

that the store sends used coupons to a clearinghouse. He stated that they are shipped to a clearinghouse once a week to process for manufacturer's credit. Dellay noted that if the same coupon is scanned multiple times the Company only gets credit for one coupon and the Company takes a loss for the additional times the coupon was scanned and credit given to a customer. According to Dellay, associates should know that a coupon needs to be matched up with a product. He stated that when coupons do not scan, a manager or front-end supervisor is called upon to make a

d. We double the savings marked on any manufacturer's coupon up to .990. Any coupon \$1.00 and greater will be redeemed at face value for the item purchased.

e. In cases where the double coupon total exceeds the value of the item, the offer is limited to the retail price.

f. The maximum number of identical coupons allowed for each identical item is 16, unless otherwise stated on the coupon.

A maximum of four (4) identical manufacturer's coupons may be doubled.

Up to an additional 12 identical manufacturer's coupons can be redeemed at face value for a total of 16 identical manufacturer's coupons.

Example: If a customer purchased five (5) boxes of Cheerios and presented five (5) manufacturer's coupons for .50¢ each, the first four (4) coupons would be doubled to \$1.00. The fifth coupon would only be redeemed for .500.

4.0 Redeeming Coupons

4.1 The cashier must total the order prior to scanning any coupons.

4.2 Coupons may only be redeemed for the specific product and have a valid expiration date. If the coupon does not meet these requirements, the cashier must return the coupon to the customer.

4.3 Only four (4) manufacturer's coupons for like items will be doubled; an additional 12 identical manufacturer's coupons will be redeemed at face value.

4.4 If the coupon is for a "free" product, the cashier must mark the price of the item on the face of the coupon. Check manufacturer maximum amount, if applicable. Coupon cannot be redeemed for more than the value of the item.

4.5 In the event a Customer presents coupons after the completion of the order, returns with coupons, or the cashier forgot to redeem the coupons, these coupons should be accepted following coupon acceptance guidelines.

4.6 Coupons must be treated like cash and be secured at the end of each transaction.

4.7 The cashier must hand the customer all Catalina coupons that are generated at the end of the customer's order.

a. If the customer does not want their coupons, the cashier must tear the unwanted coupons in half and discard them.

b. An Associate cannot redeem any coupons that are generated by a customer's order. The Associate can only redeem Catalina coupons that were generated by their personal shopping.

4.8 Personal coupons should not be given to customers or exchanged with customers while the Associate is working.

4.9 The cashier must keep manufacturer's coupons separate from store coupons.

5.3 Send manufacturer's coupons to the clearing house following procedures below:

decision as to whether the coupon can be used. Dellay confirmed that if a customer provides an expired coupon or a coupon that does not match a product that a customer is purchasing the computer will indicate the coupon is not valid. He stated that if someone scanned a coupon multiple times, it would stop the cashier once the value of the product has been reached. In addition, the Company has written "Guidelines for Store Associates." The document includes the following provisions under "Professional Conduct:" "The following are examples of infractions of rules of conduct that may result in disciplinary action, including suspension or termination of employment: "Dishonesty, theft, unauthorized removal, consumption or possession of company property."

According to Dellay, [REDACTED] had gone through the computerized training system, which is a four-hour video system that takes the user through different tenders, coupons, scanning and an overview of how to handle transactions. In addition, he noted that after that training, [REDACTED] received one-to-one peer-to-peer training until she was comfortable on her own. [REDACTED] testified that she was not taught anything about coupons during her training. However, she stated that she was told to scan a coupon and that if the coupon did not work to ask the manager because some customers need to use the coupon even if the computer does not accept it. [REDACTED] stated that she scanned all coupons and confirmed that sometimes the machine did not take the coupon because the customer did not purchase the product. According to [REDACTED], she would cancel out a coupon if it did not match a product and she would tell the customer that the coupon "doesn't want to accept." [REDACTED] testified that she believed that if the machine accepted a coupon it was fine. With regard to the Grievant, Dellay agreed that she was not trained as a cashier. He noted that she was "always a deli clerk or a cold foods clerk" while he was working in the store. The Grievant acknowledged that there are rules that you should not use coupons for products that you did not buy.

[REDACTED] confirmed that there were times when she was assigned to the self-scan area to assist customers. She noted that customers were able to scan their own coupons in those areas. [REDACTED] stated that she knew there was a "little electric eye" in the slot to make sure that once the coupon was scanned the coupon was deposited into the slot. She confirmed that she would tear off little corners of a coupon and placed it in the slot at the electric eye is in order to have the machine believe that there was a coupon being used each time. [REDACTED] testified that she had observed her manager do the same thing. In addition, she

testified that other cashiers and employees would use the pen from the pin pad to accomplish the same result if they did not have paper.

██████ testified that she knew the Grievant while working at the Company because they both spoke Arabic and the Grievant did not speak English well. She agreed that the Grievant would come to her line if she did not have a line of customers. ██████ stated that she believed that ██████ would come to her checkout line because she would tell her what was on sale and what products had available coupons. She testified that she would help all customers and would tell other customers about "deals" just as she would for the Grievant. According to ██████, her desire to help customers is shown by the fact that she paid for some of the groceries purchased by a female customer who did not have enough money to pay for her entire order. ██████ stated that she asked her manager if she could pay for the part of the order and the manager gave his approval, and later gave her a \$20 scratch ticket to acknowledge her act.

The Employer introduced receipts of purchases made at ██████'s register. It also introduced video surveillance for ██████'s register. During their testimony both Employer and Union witnesses reviewed the receipts and/or video. Delloy testified that he reviewed purchases made by the Grievant at ██████'s cash register on April 12, 13, and 18th and found that the Grievant purchased numerous bottles of laundry detergent on those dates. He testified that he found it "kind of strange" and "odd" that such a large amount of detergent was purchased with coupons.

With regard to a transaction on April 21st, ██████ identified the individual in the video as a customer and not the Grievant. She recalled that the customer spoke Arabic. She noted, "every customer know I speak another language because my accent is very bad." According to ██████, her manager can be seen in the video using his "key" to input the "deal." Delloy testified that although ██████'s Stop & Shop card was scanned, ██████ is not shown in the video as checking out. Delloy stated that ██████ scanned 5 rain checks. He noted that an assistant manager then came over to approve an additional \$5 off promotion that needs to be manually entered. Delloy explained that ██████ then scans the same coupon 10 times. He stated that ██████ came to the end of the register. Delloy explained that associates that have family members that live with them are entitled to the discounts. Delloy stated that the violation he observed in the video was that the Grievant's "personal Stop & Shop card was being used by another person, and she scanned one single coupon

ten times, giving the Grievant a \$10 discount which the store will only get a \$1 credit on." The Grievant testified that her daughter is buying items at [REDACTED]'s register. She stated that her daughter was living with her at the time.

Upon review of a video from April 27, 2017 [REDACTED] confirmed that she is at the register with the Grievant. She confirmed that the Grievant was making a purchase of Airwick. [REDACTED] stated that the Grievant did not know the item had a \$4 coupon and she told the Grievant about the coupon and scanned the coupon. [REDACTED] testified that she believed what she was doing was not improper. Dellay testified that it appeared that [REDACTED] was scanning the same coupon twice. He agreed that he could not determine whether [REDACTED] is telling [REDACTED] what she is doing. The Grievant testified that she could not remember if [REDACTED] said anything to her about coupons or about saving her any money. She stated that she was doing nothing wrong in the video and that she did not know if [REDACTED] was doing anything wrong.

Molly Bagge, (hereinafter "Bagge") held the position of Asset Protection Associate. In part, her job involves reviewing "unusual purchases." She testified that she did "a brief analysis for each date that the Grievant's Stop & Shop card was used and how many coupons were scanned during that order along with the cashier number." According to Bagge, her review showed that on April 28, 2017, the Grievant received a \$5 off coupon as well as a \$2 off coupon, and a \$3 off coupon." She noted that the \$2 and \$3 coupon were linked to the Grievant's Stop & Shop card and all the coupons would have been entered by the cashier.

With regard to video from May 18, 2017, [REDACTED] confirmed that she was at the register with the Grievant and the Grievant was buying Tide and Arm & Hammer detergent. [REDACTED] stated that she scanned the same coupon over and over because they were the same. [REDACTED] stated that she did not know if it was okay to run the same coupon 4 times, but noted that she had seen other cashiers scan the same coupon. [REDACTED] stated that [REDACTED] gave her a coupon for each item that she was purchasing. The Grievant stated that in the video she is buying multiple bottles of detergent because she has a big family and they do a lot of laundry. She noted that when she was paying [REDACTED] was showing her how to use her credit card in the "chip" machine. Dellay reviewed receipts and video from May 18, 2017. Dellay noted that electronic store coupons and a rain check were used for the purchase. He testified that the violation was "scanning the same coupon too many times, not having enough per item, not having enough coupons per amount of items she actually purchased."

██████ was shown a video of May 19, 2017. She stated that in this video the Grievant is buying baby cups at the self-scan line and she scanned the baby cups for her. She noted that the Grievant had a "Catalina coupon" in her hand. The evidence indicates that there is a Catalina system that is connected to the Stop & Shop system. The system looks at what a customer purchases and may generate coupons specific to the customer's purchases for the customer to use at a future time. ██████ explained that she keeps Catalina coupons that a customer does not take on top of the register and uses them for other customers. She stated that she used a "Catalina coupon" for the Grievant's purchase. Delloy reviewed the receipt for the transactions on May 19, 2017. He confirmed that the receipt shows that the Grievant purchased two infant baby cups: one for \$7.99, and one for \$8.99. He noted that the receipt shows an employee discount of 85 cents. He goes on to explain that the receipt shows that ██████ scanned a \$2 coupon four times, a manufacturer coupon, the reversal of the associate discount and then the recalculation of the new associate discount based on the total. Delloy also points out that on the bottom the final \$2 Health & Beauty Coupon was manually entered. Delloy testified that based upon his review of the video, it appeared that ██████ was explaining to the Grievant what she was doing. Specifically, he noted that at one point it appeared that ██████ was showing ██████ on the screen how she got additional coupons to come off by "hand-gesturing down toward the coupon box how she was putting pieces in there after she scanned the coupon." Delloy explained that in the course of this transaction, the violation was that 2 items were purchased, but there were 5 coupons scanned.

██████ reviewed video from May 23, 2017. She stated that at first a woman is seen in the video that is not the Grievant. ██████ identified the individual as someone that worked in the office. According to ██████, she used one of her coupons for a purchase by the office employee. ██████ noted that the Grievant followed the office person on the line and purchased produce. She noted that she placed a Stop & Shop flyer on the counter to show ██████ to determine if there was something in there that she wanted to buy. She also confirmed that at one point she reached into her back pocket with her left hand to take out a coupon and proceeded to swipe it. ██████ stated that the Employer gave her a \$5 coupon via email and she used the coupon on the Grievant's purchase. She testified that she did not tell ██████ that she had scanned the coupon for \$5. Delloy testified that the violation was that ██████ used a personal coupon for ██████ and

that [REDACTED] did not put the coupon in the coupon box after it was used. Dellay stated that the coupon is for a specific person and [REDACTED] should not have been using that coupon for the Grievant. The Grievant testified that she does not know if [REDACTED] was using more discounts on the cucumbers and did not know that she was giving her a discount on the things she bought that day.

With regard to video from May 25, 2017. [REDACTED] confirmed she is in the video with the Grievant. [REDACTED] stated that a magazine is out because she is telling [REDACTED] about the deals that are included in the Shop & Stop magazine. According to [REDACTED] the Grievant did not ask for the magazine. The magazine included a deal for free chocolates and Oreos. [REDACTED] testified that it was her idea that the Grievant buy the chocolates that were offered in the magazine. She noted that at the time the Grievant was buying the chocolates, the customer behind her was buying three Poland Spring bottles, and she told him that there was a deal for a free fourth one. Dellay reviewed the video. He testified that [REDACTED] is seen flipping through the magazine. He noted that [REDACTED] starts scanning the \$2 coupon for the Oreo Milka bars and scans the same coupon 9 times with the symbol gun. According to Dellay, by scanning the same coupon 9 times, [REDACTED] discounted \$18, making all of the Milka Bars free with an \$8 credit to her order. Dellay explained that the system would not have stopped her until the coupons exceeded the amount of items in the transaction. Dellay indicated that if [REDACTED] had tried to scan the coupon a tenth time, then the system would not have allowed it. The Grievant confirmed that [REDACTED] showed her the magazine and told her that chocolates were on sale. [REDACTED] stated that she was not planning on buying the candy and that it was [REDACTED]'s idea to look in the Sunday magazine.

Dellay testified that a review of records showed that [REDACTED] saw 3 cashiers 12 times and she saw [REDACTED] 9 times between 3/26 and 6/8. Dellay stated that that he knew that [REDACTED]'s son used to work in the Norwood store and that he occasionally worked as a cashier. The evidence indicates that the Grievant's son left the employ of the store approximately two years prior to the incidents at issue in this case. Dellay stated that he did not review whether [REDACTED] was engaged in any inappropriate interactions with [REDACTED] as a cashier.⁵ Dellay also confirmed that [REDACTED] works at the store and that he worked at the store at the time of the alleged misconduct and he never reviewed whether the [REDACTED] inappropriately used coupons. The evidence indicates that [REDACTED] did

⁵ The evidence suggests that such documents would only go back six months.

not work on the same shift with the Grievant. Delloy testified that before [REDACTED] worked at the store nothing was brought to his attention about [REDACTED] improperly using coupons.

Delloy suspended the Grievant pending termination. The Associate Counseling Record dated June 2, 2107 stated:

[REDACTED] is being suspended today because on multiple occasions she was receiving coupon discounts going through Cashier [REDACTED] register. Cashier [REDACTED] was scanning one coupon multiple times reducing [REDACTED]'s order total. When [REDACTED] was asked about this she stated that she had not realized that was what [REDACTED] was doing. [REDACTED] was told that she was suspended and needed to contact the union.

Delloy testified that the discipline was not based upon the Grievant improperly sharing her card with a family member or anyone else.

Allison Goldstein, (hereinafter "Goldstein") has held the position of Director of Human Resources since 2010. She has been employed by the Company since 2002. Goldstein is responsible for labor relations, investigations, trainings, diversity and inclusion. There were 100 stores in her district at the time of the incident. Goldstein explained that when an employee is suspended "it's almost always a suspension pending termination." Goldstein stated that in reviewing the video and the receipts, she concluded that there had been a violation of policies. Upon review of the policies and procedures handbook, Goldstein identified dishonesty, theft, unauthorized removal, consumption or possession of Company property, failure to properly record a sale at the time of purchase as violations committed by the Grievant.

Goldstein testified that she gave the Grievant an opportunity to explain what happened. She agreed that there was a language barrier when she met with the Grievant and the Grievant's son had to serve as a translator. Goldstein testified that during the meeting the Grievant took the position that she did not know what [REDACTED] was doing or that what she was doing violated Company policy. Goldstein testified that during her meeting with [REDACTED], [REDACTED] tried to take the blame for the use of the coupons.

Goldstein stated that she determined that the termination of the Grievant was appropriate. She stated that she believed

that as a long term employee the Grievant was aware of the policy and past practice regarding the use of coupons. Goldstein noted that she has reviewed other Company decisions relating to theft of product and discounting of product and felt that the action taken against the Grievant was consistent with discipline issued to other employees. She stated that she has not seen a situation where the Company did not terminate an employee that was found to have engaged in coupon fraud. Goldstein testified that she questioned ██████'s credibility. She stated, "I felt like she was falling on the sword to try and save her friend, and it seemed even prior to speaking to ██████ - - because I met with ██████ a first, but it seemed kind of improbable what she was saying, that I just didn't understand and she didn't understand and it was all my fault, because there were so many instances and the discounts were steep." Goldstein noted that at times she observed on the video a clear interaction between ██████ and the Grievant, as in the Milka bar video, where ██████ shows the Grievant the coupon ahead of time, and then the Grievant goes and gets the Milka bars and puts them up. However, Goldstein agreed that she did not know for sure if ██████ told the Grievant to get the Milka bars.

In addition, Goldstein added that the number of times ██████ used ██████'s cashier line was also of concern. She noted that ██████ visited ██████ 9 times from March 26th to June 8, 2017. She noted that the next closest drops down to four visits with another cashier. She agreed that she did not know how many coupons ██████ used with other employees. However, she stated that it was irrelevant whether or not ██████ was engaged in the same conduct with everyone else because the Grievant is responsible for herself and has a responsibility to pay the price in effect just like the rest of the associates in the store and the Company. Further, Goldstein explained that the dollar amount of the coupons associated with ██████'s cashier number is extremely high. She noted that the dollar value is close to \$120, and the next highest dollar amount was associated with the person who ran the front end. Goldstein stated that it would be expected for the person that runs the front end to have a relatively high dollar amount since they would get involved in more transactions.

Positions of Parties

Union

At the outset, the Union notes that the Grievant worked for the Company for approximately ten years and had no record of

prior discipline. The Union contends that the Grievant was not "sophisticated in the ways of money or economics," and would often ask for help when using the credit card machine at checkout, or at self-checkout. It notes that her job did not require her to deal with money or any real paperwork. Further, it notes that at one point her son had worked in the store as a cashier and she would go through his line with her groceries without ever being accused of issues with coupons. The Union notes that ██████ admitted that she gave customers and coworkers discounts that they did not necessarily deserve.

With regard to the April 12, transaction, the Union notes that the receipt for this purchase shows ██████ ringing up ██████ (or someone using ██████' Stop & Shop card) for a purchase of 10 bottles of Arm & Hammer detergent with a number of discounts. The Union asserts that the Company "adduced absolutely no evidence of wrongdoing here as there is no video to establish what coupons were actually tendered and/or accepted." It notes that ██████ testified that she had seen managers allow the \$1 discount to be applied to this particular detergent even when the vendor coupon was no longer attached. The Union contends that there is no evidence that ██████ was aware of what ██████ was doing or that ██████ may have been doing anything wrong.

With regard to transactions on April 13, and April 18, the Union argues that the evidence shows the purchase of another 10 bottles of detergent with the same discounts applied, as well as the purchase of a number of other sale and non-sale items. The Union asserts that without any video, there is no way to establish whether it was ██████ or a member of ██████' family who made the purchases or that whomever did the purchasing did anything wrong as it relates to the transactions. The Union argues that the Store Manager admitted he was merely "specult[ing]" as to wrongdoing, and that it was "absolutely" appropriate for any customer to buy multiples of a product when that product was so deeply discounted. The Union contends that the repeated use of the \$1 coupons should be held against ██████ and not the Grievant.

As for April 21st, the Union notes that the video shows ██████ ringing a \$1 coupon 10 times for 10 bottles of detergent. The Union points out that the video showed that the customer using ██████' discount was the Grievant's daughter, and that ██████ testified that she had no idea who the woman was that she gave these multiple \$1 discounts. The Union asserts that this testimony underscores the fact that ██████ was improperly giving discounts to everyone and not just to ██████. The Union argues

that the Company's reliance on the April 21 transaction is problematic for 2 reasons: (1) ██████ was not the customer in the video and thus cannot be found at fault for any of the discounts tendered by ██████; and (2) the Company's implicit suggestion that ██████ did anything wrong by letting someone else use her card is wrong as a matter of fact and was not relied on by the Company for the termination decision.

With regard to April 27, the Union agrees that the receipt and video indicates that ██████ sold ██████ an Airwick Fresh Kit with one improper discount applied. However, the Union argues that there is no evidence to suggest that ██████ was aware of the extra discount or was complicit in the coupon violation.

As for the April 28 purchase, the Union notes that there was no available video evidence. Again, the Union asserts that if there was any wrongdoing with regard to the \$5 coupons, ██████ would be the culpable party because there is no evidence that ██████ understood what was happening with this or any other transaction.

With regard to May 18, the Union argues that ██████ is seen ringing ██████' Stop & Shop card. It notes that ██████ testified that she recalled ██████ giving her multiple coupons. The Union contends that "the Company failed to establish whether ██████ actually tendered the right number of coupons or whether she was aware of ██████ committing these coupon violations. The Union notes that the video also shows ██████' lack of sophistication with regard to the electronic register system as ██████ had to turn the pin-pad screen to help ██████. In the Union's view, this is evidence that the Grievant lacked a level of sophistication to understand the coupon system.

As for the May 19 purchase, the Union notes that the video shows ██████ assisting ██████ through the self-checkout where ██████ purchased 2 baby cups. The Union argues that ██████ planned to buy a different baby cup for which she had a coupon for, but ██████ discouraged the product and went to the aisle to get a different product for which ██████ did not have a coupon. The Union agrees that ██████ gave the Grievant the discount despite not having a coupon. Again, the Union asserts that there is no evidence that ██████ knowingly participated in the fraud and ██████ testified that she did not look at the receipt.

With regard to the May 23 purchase, the Union notes that ██████ purchased a small grocery order consisting of mostly produce with 4 items being reduced by automatic markdown. At the

end of the transaction, █████ rang a \$5 off coupon for █████' order that █████ testified she got via email. The Union agrees that █████ violated the coupon policy by using her coupon for █████, but argues that there is no evidence that █████ asked █████ about the sale or told her that she was giving her a coupon. The Union notes that █████ testified that she did this of her own volition and did not ask or tell █████. Moreover, it notes that █████ testified she had no idea she was receiving any such discounts.

As for the May 25 purchase, the Union states that the video shows █████ looking through the Stop & Shop promotional magazine that had a coupon for free Oreo-flavored Milka bars. It argues that █████ was not aware of the offer, and █████ suggested that █████ get some candy bars and pointed out where they were located. The Union asserts that █████ does not appear to be looking closely at the magazine or reading the details of the coupon. The Union agrees that discounts were taken and a coupon was scanned 9 times. However, it asserts that there is no evidence that █████ knew it was improper for █████ to be using the coupons. It notes that at the time █████ was ringing up the order, █████ was not watching █████.

The Union notes that during the investigation, the Company interviewed █████, who admitted the coupon violations were entirely her fault and that █████ had no knowledge of or involvement in the coupons █████ was ringing on her orders. The Union argues that at no time during the investigation did the Company show █████ any of the videos or receipts or ask her to explain the receipts or the videos.

In the Union's view, the Company failed to introduce any evidence that █████ intended to engage in theft or purposefully accepted any improper discounts. The Union argues that the Company decision-makers jumped to the conclusion that █████ and █████ were personal friends when they merely associated because they spoke the same language.

The Union asks the Arbitrator to reject any suggestion by the Company that the number and type of transactions █████ had with █████ demonstrates that █████ was complicit in the use of the coupons. Although the Union agrees that █████ went through █████'s line approximately twice as often as several others, the Union contends that "nothing damning can or should be drawn from █████' desire to be served by someone who speaks her own language."

Moreover, it is the Union's position that the Company failed to do any meaningful analysis of ██████'s transactions with other customers and associates to determine whether ██████ was "somehow anomalous." It notes that evidence was introduced that during the same time period covered, three other associates went through ██████'s line. One of the associates received \$5 discounts at ██████'s register on two days in a row. The Union contends that the Company's evidence shows that all associates that went through ██████'s line ended up with \$5 coupons, and the Company failed to look into the other associates' transactions—instead, they focused solely on ██████ and then terminated her without sufficient evidence or cause.

The Union contends that the Associate Counseling Record given to the Grievant at the beginning of her suspension pending investigation was the only written statement of the reasons for ██████' suspension and ultimate termination. It notes that the document alleges improper use of coupons when going through ██████'s register but does not indicate that ██████ allowed someone else to improperly use her discount. The Union argues that the Store Manager admitted that ██████ was not terminated for "Sharing her card improperly" and thus, the Union asks the Arbitrator ignore evidence regarding the use of the Grievant's card by family."

The Union contends that since the Employer has alleged that conduct on the part of the Grievant that amounts to theft it must meet a higher burden of proof than is used in other termination cases and must show that the Grievant had the intent to engage in theft. In the Union's view, the Company produced no evidence that ██████ had the intent to steal from the Company. Further, it argues that there is insufficient evidence to attribute any knowledge of wrongdoing to ██████. Further, it argues that even if the Arbitrator finds that ██████ should have paid more attention to what was going on when being checked out by ██████, it does not support the penalty of discharge being imposed upon an employee with an "unblemished" 10-year history with the Company.

Employer

The Employer argues that the Grievant was the beneficiary of a consistent pattern of coupon fraud over the course of several months in violation of Company policy. In the Employer's view, there can be no doubt that ██████ knew or had reason to know that she was benefitting from the abuse of the Company's coupon policy. It argues that ██████ admitted she was

aware of the Company's rules regarding coupon use. The Employer contends that █████ testified that █████ told her that she did not have the required coupons for the items being purchased. The Employer notes that the Grievant checked out with █████ more than any other cashier, and benefitted from coupon use more than any other associate who engaged in transactions with █████. It argues that willful ignorance of what occurred during her purchases cannot constitute a valid defense to her discipline. The Employer notes that its coupon policy states that "only (1) manufacturer coupon may be used on each individual item purchased" and "store coupons cannot be doubled or tripled", that coupons "cannot be redeemed for more than the value of the item." As such, "[a]ny associate who redeems, submits for redemption or gives direction to submit coupons for redemption in violation of the terms outlined on the coupons will be subject to disciplinary action, up to and including termination." The Employer also notes that it is against policy to engage in "dishonesty, theft, unauthorized removal, consumption or possession of Company property."

The Company argues that on April 21, █████ purchased 10 containers of detergent, on a buy-one-get-one-free promotion. It notes that the receipt shows that █████ got a promotional \$5 as well as a \$1 coupon that was scanned 10 times.

With regard to the transaction of April 27 the Employer contends that █████ removed two flaps of a product █████ was purchasing and scanned one of the flaps twice, resulting in a \$2 coupon being applied twice to █████' order. It notes that since there was only one item, █████ should have only scanned the coupon once. With regard to May 18, the Employer argues that █████ purchased 2 containers of Tide and 4 containers of Arm & Hammer and █████ used a raincheck coupon for the Arm & Hammer product as well as one \$1 coupon, scanned twice, and a second \$1 vendor coupon, which was scanned 4 times. The Employer argues that the manner in which both the vendor coupons were scanned violated the Company's policy against scanning the same coupon multiple times. In addition, it notes that it was a violation of the policy by failing to properly secure the coupon in the coupon box. On May 19, it notes that █████ assisted the Grievant at the self-checkout and scanned one coupon for \$2 four times, with an additional \$2 health and beauty coupon entered manually. It notes that █████ also scanned a single coupon 4 times, tearing a piece off and putting it in the coupon drop. It argues that the video shows █████ standing next to █████ engaging in conversation.

The Employer notes that on May 23, ██████ used a coupon for \$5. It notes that the video shows ██████ taking a coupon from her pocket, scanning it, and then returning it to her pocket. As for the May 25 interaction, the Company contends that ██████ used a \$5 coupon as well as nine \$2 coupons. It notes that on the video footage, ██████ is seen looking through a copy of Stop & Shop's magazine until she finds a coupon for Oreo Milka Bars, which she removes from the magazine with ██████ watching. Further, it notes that ██████ is observed going to the candy aisle and returning with 10 bars. It argues that the video shows ██████ using her hand scanner to scan the coupon for the Milka bars 9 times. The Company notes that since the coupon was for \$2, the candy bars ended up being free, and ██████ received an additional \$8 discount to her overall purchase in violation of the coupon redemption policy.

The Employer, relying on the testimony of Asset Protection Associate Molly Bagge argues that from April to May 2017, ██████ scanned thirteen \$5 coupons, eighteen \$2 coupons, and fifty-four \$1 coupons for ██████. Further, it notes that Bagge testified that ██████ went to ██████ more frequently than any other cashier and that ██████'s coupon scanning was higher with ██████ than any other associate.

The Employer acknowledges that ██████ admitted to scanning the same coupon multiple times during a number of ██████' transactions, and claiming that the Grievant was not responsible for the violations. However, the Company questions the credibility of ██████ and the Grievant. It notes that after meeting separately with ██████ and the Grievant, Goldstein questioned the credibility of both ██████ and ██████ on the grounds that given the amount of discounts, as well as the video footage which showed the women conversing and behaving very friendly with each other it was appropriate to conclude that ██████ was aware of what was happening.

Further, the Company argues that there is no evidence to suggest that ██████ was treated unfairly. In this regard, it notes that Goldstein testified that employees who have been found to have engaged in similar behavior were also terminated. Specifically, it notes that Goldstein stated that coupon fraud is a significant concern for the Company and she could not recall a case where the Company did not terminate an employee who was found to have engaged in coupon fraud, and that the cases she had reviewed in the last several years had all resulted in termination.

Discussion

Although the issue presented concerns whether the Grievant was terminated for just cause, the evidence presented is largely about the actions of █████. There is no dispute that █████ violated Company policy regarding the use of coupons on numerous occasions. The evidence, in the form of video, receipts and █████'s own testimony, reveals that █████ violated Company policy by scanning the same coupon multiple times, used coupons that the Grievant did not provide, and used discounts for the Grievant that were assigned to █████ for her personal use. █████ testified that she did not always tell the Grievant she was using coupons or discounts and never told the Grievant that she was using coupons or discounts in violation of Company policy. Similarly, the Grievant testified that she either did not know that █████ was using coupons or discounts or when she did know she did not know █████ was acting inappropriately.

At the outset, it must be recognized that the Grievant was not a cashier and there is no evidence that she was trained in the use of coupons. However, the evidence does indicate that a multi-page policy existed regarding the use and processing of coupons. A review of the policy indicates a rather elaborate set of rules concerning the use of coupons. The policy describes situations in which a combination of coupons and discounts can be used. In fact, Dellay described such a situation in his testimony. In short, it is not a simple set of rules. Although the Grievant acknowledges that there are rules that you should not use coupons for products that you did not buy, the notion that a store employee that does not work as a cashier and was not trained or explained the written policy would have a grasp of policies involving the use of other discounts in conjunction with coupons is not reasonable. In this regard, I note that a number of situations in which █████ used coupons involved a combination of coupons and discounts. Based upon my review of the video, I am persuaded that for a customer (even a non-cashier employee) keeping track of when such combinations are allowed and when they are not allowed would not be easy.

Moreover, assuming that the Grievant was responsible for understanding even the most basic rules regarding the use of coupons, the question is whether the Grievant knowingly participated in violating the rule. As previously noted, █████ testified on direct and cross examination that she did not tell the Grievant what she was doing when she scanned a coupon multiple times, or used a coupon that the Grievant had not given her. Similarly, the Grievant denied knowing what █████ was doing.

The Employer relies upon video that it suggests shows the Grievant observing ██████'s actions, or verbally interacting with ██████. In addition to reviewing the video during the hearing, I reviewed the video post hearing during my evaluation of the evidence. The video does not have audio. Although there are times that the Grievant and ██████ can be seen talking, there is no way of knowing what they were actually saying to each other. Moreover, during a significant portion of the time that the Grievant was at ██████'s register, she was often not focused on ██████'s scanning. It would be speculative to assume that ██████ was providing the Grievant with sufficient information so as to alert her that the rules concerning the use of coupons and discounts were being violated.

The Employer also argues that the number of times that the Grievant went through ██████'s line is evidence that they were working in concert to inappropriately use coupons and discounts to the Grievant's benefit. The evidence indicates that the Grievant did go through ██████'s line more times than the lines of other cashiers, and saved more money due to coupons going through ██████'s line as compared to when she went through the line of other cashiers. On its face, this evidence would indicate that the Grievant favored ██████ over other cashiers. Even if the Grievant favored ██████ as a cashier, such evidence does not demonstrate that she knew or believed that ██████ was violating Company policy to benefit her. It is reasonable that any customer could be more comfortable with a particular cashier if that cashier is available. In the case of the Grievant, it is understandable that she would prefer checking out with ██████ since they both spoke the same language. In this regard, there is no evidence that the Grievant waited in a long line to be able to go through ██████'s line at a time that another cashier had a short line. Even if the Grievant believed that ██████ looked out for her by finding coupons in the Stop & Shop magazine, providing coupons left by other customers, or that ██████ used a personal coupon to benefit the Grievant, such evidence does not demonstrate that the Grievant was aware of the specific coupon rules and therefore engaged in knowing fraud. I recognize that the Company's coupon rules provides that coupons directed to a particular employee cannot be used by another employee, however, as previously noted, the Grievant was not specifically trained with regard to the nuances of coupon redemption. Moreover, it cannot be ignored that English is not the Grievant's first language and therefore would have made her understanding of the multi-page policy all the more difficult to comprehend and absorb without appropriate training.

Further, the fact that the Grievant "stocked up" on detergent does not indicate she was engaging in fraud. The fact that "stocking up" on detergent seemed "odd" to Dellay does not make such a purchase unreasonable or evidence that the Grievant was engaging in fraud.⁶ The Grievant testified that her family used a laundromat to do laundry and could use four machines at a time going through 2 bottles each time.

The Company has a right to protect its assets and enforce reasonable rules. Clearly, the use of coupons in a manner that deprives the Company of money that it is entitled to violates Company policy. However, the just cause standard requires the Employer to demonstrate that an employee has actually engaged in the misuse of coupons and discounts and was aware or should have been aware of the rules being violated. Although the evidence in this case may lead to significant speculation, it does not support the conclusion that the Grievant was aware of the misconduct of [REDACTED]. See: City of Indianapolis and AFSCME Council 62, (2003, Kohn). Moreover, I am not persuaded that the Grievant had sufficient knowledge, based upon formal or informal training, regarding the coupon and discount policy to conclude that she was simply acting as an "ignorant bystander" while [REDACTED] engaged in misconduct to her benefit. Therefore, based upon all the evidence and the above analysis, I conclude that the Company did not have just cause to terminate the Grievant.

Award

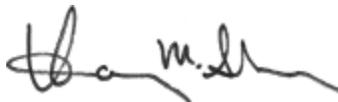
1. The Employer did not have just cause to terminate the Grievant.
2. The Grievant shall be reinstated to her former position.
3. The Grievant shall be entitled to back pay and other benefits for the period since her termination up to the date she is reinstated. Such back pay shall be reduced by the amount of any compensation,⁷ and any earnings from other

⁶ With regard to the Grievant's card being used by another individual, the Company agreed at hearing that it was not claiming that its decision to terminate relied upon the Grievant's card being used by an individual other than the Grievant. Further, I note that the only evidence regarding the card being used by someone other than the Grievant indicates that the card was used by the Grievant's daughter who was living with the Grievant at the time the card was used. The evidence indicates that Company policy allows a relative living with the employee to use the employee's card.

⁷ The Grievant and the Employer shall comply with all statutory requirements that may apply regarding the reimbursement of unemployment compensation that may be applicable as a result of this award. In the event that applicable law does not require that unemployment compensation be reimbursed, the amount of

employment received by the Grievant during the period that back pay accrued.

4. All reference to the termination shall be expunged from all formal and informal files.



Harvey M. Shrage
Arbitrator

March 30, 2018

unemployment compensation received by the Grievant shall be deducted from the Grievant's back pay entitlement.