**4.17 Employee Claim against Employer and Union (*Vaca v. Sipes*)**

In this case, [name of plaintiff] makes two claims. The first claim is that [name of plaintiff]’s employer discharged [name of plaintiff] without just cause in violation of the collective-bargaining agreement governing the terms and conditions of [his/her] employment.

The second claim is that [name of plaintiff]’s union breached its duty to fairly represent [name of plaintiff] as one of its members by failing to investigate or otherwise process [his/her] grievance against [his/her] employer under the collective-bargaining agreement’s grievance procedure.

The law prohibits an employer from discharging an employee governed by a collective-bargaining agreement unless there is just cause to dismiss the employee.

“Just cause” means a real cause or basis for dismissal – not an arbitrary whim. “Just cause” is something that a reasonable employer, acting in good faith in similar circumstances, would regard as a good reason for dismissing an employee.

For the first claim, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: [Name of employer] discharged [name of plaintiff] from employment; and

Second: [Name of employer] discharged [name of plaintiff] without just cause.

If you find for [name of plaintiff] on the first claim, you must consider the second claim: that [name of union] breached its duty of fair representation – that [name of union] did not fairly represent [name of plaintiff] as one of its members.

To succeed on this second claim, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: [Name of employer] discharged [name of plaintiff] from employment, and that the discharge was without just cause;

Second: [Name of plaintiff] was a member of a collective-bargaining unit represented by [name of union];

Third: [Name of plaintiff] filed a grievance with [name of union];

Fourth: [Name of union] breached its duty of fair representation by handling the grievance proceedings arbitrarily, discriminatorily, or in bad faith; and

Fifth: [Name of union]’s breach materially affected the outcome of [name of plaintiff]’s grievance hearing.

A union has a legal duty to fairly represent the interests of its members in protecting their rights under a collective-bargaining agreement. But an employee does not have an absolute right to require the union to pursue a grievance against an employer. The test is basic fairness. As long as the union acts in good faith, the law allows it to exercise broad discretion to determine whether it should pursue the employee’s grievance against an employer under a collective-bargaining agreement.

For example, the union may weigh the cost of pursuing a grievance against the likelihood of success. So even if an employee’s grievance has merit, mere negligence or the union’s exercise of poor judgment does not establish a breach of its duty of fair representation.

But when a union acts arbitrarily or carelessly, or dishonestly and in bad faith, by refusing to pursue a union member’s meritorious grievance, it violates its duty to represent fairly the member who lodged the grievance.

[In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.]

If you find for [name of plaintiff] on [his/her] first claim or on both claims, you must consider [his/her] damages. The damage award should be an amount that justly compensates [him/her] for the damages [he/she] incurred.

The measure of these damages, if any, is the amount [name of plaintiff] would have earned from [his/her] employment with [name of employer] if [name of employer] had not discharged [him/her]. But you must reduce this amount by any earnings [name of plaintiff] received, or reasonably could have received, from other employment. [Name of plaintiff] has a duty to mitigate or minimize the damages. [Name of defendant] is not responsible for lost earnings to the extent that [name of plaintiff] could have avoided those lost earnings by using reasonable care in seeking other employment.

After you have determined an amount for damages, if you have found for [name of plaintiff] and against both the employer and the union, you must then divide the damages between the employer and the union. The employer is only responsible for lost wages caused by discharging [name of plaintiff] in breach of the collective-bargaining agreement. But any increase in lost wages that the union caused by failing to pursue [name of plaintiff]’s grievance should be charged to the union – not to the employer.

So if you decide that [name of plaintiff] would have been reimbursed for lost wages or reinstated to [his/her] job if the union had fairly represented [him/her], then you must divide those lost wages between the employer and the union. In that case, you should allot damages to the union to the extent its breach of duty to fairly represent [name of plaintiff] increased the amount of wages [he/she] lost.

**Special Interrogatories To The Jury**

Do you find from a preponderance of the evidence:

 That [name of defendant] discharged [name of plaintiff] from employment?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

 That the discharge was without “just cause”?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

 That [name of union] breached its duty of fair representation owed to [name of plaintiff] as one of its members?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 That [name of plaintiff] should be awarded damages?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,”

in what amount? $\_\_\_\_\_\_\_\_\_\_\_\_\_

 That [name of plaintiff]’s damages should be divided between the defendants?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,”

how should they be divided?

\_\_\_\_\_\_\_\_\_\_\_\_\_ % against [name of defendant]

\_\_\_\_\_\_\_\_\_\_\_\_\_ % against [name of union]

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_