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*CONFIDENTIAL ATTORNEY/CLIENT
PRIVILEGED MEMORANDUM*

DATE: January 28, 2014

TO: Hotel Association of New York City, Inc.
Labor Relations Members
General Managers, Human Resources Directors and Controllers

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: Index to Reports of Impartial Chairperson Decisions - 2013

Annexed hereto is the "Index" to the 2013 Reports of the Impartial Chairperson decisions which summarizes the decisions previously distributed. The Index is broken down into subject headings: Discharge and Discipline and Contract Issues. Cases are indexed under various topics in the two sections with the appropriate references to the report number, decision number and page number of the report.

If you have any questions concerning a case reported in the summary or regarding issues that may arise, do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Niki J. Franzitta, Lois M. Traub, Alexander Soric or Robert L. Sacks.

cc: Joseph E. Spinnato, Esq.
Geoffrey A. Mills, Chairman

**INDEX TO THE 2013
REPORTS OF IMPARTIAL CHAIRPERSON DECISIONS
REPORT NOS. 1 AND 2**

		<u>Report #</u>	<u>Decision</u>	<u>Page(s)</u>
I.	DISCHARGE AND DISCIPLINE			
A.	<u>Physical Altercations</u>			
1.	IC did not approve proposed discharge of In-Room Dining Server/Delegate for waving butter knife around in a joking manner, causing co-worker to cut his hand; IC found that conduct was horseplay and approved two-week suspension instead.	1/2013	2013-04	2
2.	IC upheld discharge of a Watch Engineer for assaulting Room Attendant in guest room she was cleaning, even though there were no witnesses to the incident.	1/2013	2013-11	2-3
3.	IC upheld discharges of Utility Steward and Cafeteria Attendant, for fighting in men's locker room.	1/2013	2013-19	3
4.	IC upheld discharge of PBX Operator for slapping co-worker's hand; Grievant's conduct was similar in nature to prior discipline.	1/2013	2013-20	3-4
5.	IC upheld discharge of Bus Person for engaging in a physical altercation with coworker, even though coworker instigated the argument.	2/2013	2013-33	2
6.	IC converted discharge of Houseperson for engaging in a physical altercation with coworker to time-served suspension; IC found that Grievant was acting as peacemaker throughout interaction and push of coworker was reaction to coworker's provocation.	2/2013	2013-34	2-3
B.	<u>Threats of Violence</u>			
1.	IC upheld discharge of Bellperson for making comment to Director of Human Resources about how disputes today are handled with guns; Grievant had prior VSA for similar misconduct.	1/2013	2013-07	7-8

	2.	IC upheld discharge of 24-year Banquet Server for repeatedly refusing a direction from manager to remove large table from the dining room and for cursing; Grievant had prior VSA for similar misconduct.	1/2013	2013-22	8
C.		<u>Harassment</u>			
	1.	IC denied proposed discharge of Security Officer/Delegate for yelling at manager and blocking her from leaving elevator and instead approved three-week suspension; Upon Union's request for reconsideration, IC reduced suspension to three days since that was penalty initially proposed by Hotel.	1/2013	2013-08, 2013-17	8-9
	2.	IC upheld discharge of Front Desk Agent for creating hostile working environment by following the Hotel's elderly owner into his office and screaming at him.	1/2013	2013-10	10
	3.	IC upheld discharge of Steward for creating a hostile work environment by yelling at a Supervisor and Manager and forcefully poking Supervisor several times in the chest; Grievant had two prior VSAs for similar misconduct.	1/2013	2013-21	10-11
D.		<u>Dishonesty</u>			
	1.	IC approved proposed discharge of two-year Room Attendant/Delegate for threatening coworker and dishonesty for calling police and having coworker arrested for allegedly assaulting the Delegate, although credible testimony of several witnesses proved that the Delegate lied about the events.	2/2013	2013-50	6-7
E.		<u>Inappropriate and Unprofessional Behavior</u>			
	1.	IC directed reinstatement and full back pay of Server discharged for spitting into water glasses to be served to guests; there was only one witness to the event and credibility was difficult to determine between the two employees.	2/2013	2013-30	3

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| 2. | IC upheld discharge of six-year Steward for placing a secret audio recording device in his locker and having it record conversations to which he was not a party, in violation of Hotel policy and New York State penal law, in order to capture coworker's harassing and threatening remarks. | 2/2013 | 2013-52 | 3-4 |
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F. Theft/Theft of time/ Hidden surveillance
Cameras

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|----|---|--------|---------|-----|
| 1. | IC directed reinstatement and full back pay of Bellman discharged for falsification of documents and theft; IC found evidence was not sufficient to prove that Grievant falsely requested compensation. | 1/2013 | 2013-02 | 4 |
| 2. | IC upheld discharge of Audio Visual Technician for theft of time, job abandonment, and sleeping while on duty based on evidence that Grievant repeatedly left premises for extended periods of time on several occasions. | 1/2013 | 2013-09 | 4-5 |
| 3. | IC upheld discharge of House Officer for theft of time; video footage showed Grievant left premises for almost 2 hours during his shift. | 1/2013 | 2013-23 | 5 |
| 4. | IC directed reinstatement without backpay of Tournant discharged for theft of time for leaving 10-20 minutes before the end of his shift on various occasions based on Hotel's practice whereby Tournants regularly left Hotel early if all their work was completed. | 1/2013 | 2013-29 | 6 |
| 5. | IC upheld discharge of Bellperson for being away from his work station for roughly an hour without authorization and rejected Grievant's claim that he was helping a friend whose car would not start. | 1/2013 | 2013-24 | 6-7 |
| 6. | IC sustained discharge of Steward for leaving work early and theft of time; Grievant was on video leaving her post one hour before the end of her shift and punching out 25 minutes later. | 1/2013 | 2013-25 | 7 |

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| 7. | IC approved proposed discharge of 13-year Security Officer/Delegate who exceeded his meal period by roughly one and one-half hours; Grievant spent two and one-half hours in guest room with manager who was staying in the room for the night. | 2/2013 | 2013-32 | 4 |
| 8. | IC upheld discharge of 13-year Room Attendant for theft of time, falsification of documents and dishonesty; Grievant falsified time sheets on two days and claimed that she worked until scheduled end time when she left earlier on both days. | 2/2013 | 2013-39 | 4-5 |
| 9. | IC upheld discharge of seven-year Room Attendant for falsification of Hotel records for claiming to have serviced a room that she had not serviced. | 2/2013 | 2013-48 | 5 |

G. Insubordination

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|----|---|--------|---------|---|
| 1. | IC reduced three-day suspension of Server for insubordination to one-day suspension for refusing to follow manager's instruction to notify a coworker or manager prior to leaving the Hotel due to Hotel's practice of applying progressive discipline for such violations. | 2/2013 | 2013-47 | 7 |
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H. Work Performance

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|----|---|--------|---------|-------|
| 1. | IC directed reinstatement without backpay of Bellperson discharged for failure to follow baggage-handling procedures; doctor testified that Grievant had epilepsy and that incident was likely caused by seizure. | 1/2013 | 2013-15 | 11 |
| 2. | IC upheld discharge of Houseperson for leaving door to Maintenance room open; thief later entered the room and stole \$600 worth of equipment. | 1/2013 | 2013-28 | 11-12 |

I.	<u>Sleeping while on duty</u>			
	1. IC upheld discharge of 13-year Night Cleaner for sleeping in unauthorized area past his break time, in area visible to guests walking in lobby.	2/2013	2013-38	5-6
J.	<u>Violation of a Voluntary Settlement Agreement</u>			
	1. IC directed Delegate to comply with prior last chance MHAP VSA by enrolling in MHAP within two days or risk termination.	2/2013	2013-44	7
II.	CONTRACT			
A.	<u>Overtime</u>			
	1. IC upheld proposed three-day suspension of Cook/Delegate for insubordination by refusing to work overtime; IC found that Delegate had not been asked to work unreasonable amount of overtime in month preceding incident.	1/2013	2013-05	12-13
	2. IC denied Union's grievance alleging that General Manager informed employees they would get to keep their vacation days during a renovation and that Hotel then improperly prorated employees' vacation; IC found that there was no evidence that GM expressed that vacation would be accrued during the renovation period.	2/2013	2013-36	8
B.	<u>Combination Jobs</u>			
	1. IC confirmed Hotel's right, pursuant to prior IC award, to have In-Room Dining Servers retrieve room service tables from floors and rejected Union's claim that immediately after award was issued in 2010, the Hotel began practice of paying IRD Servers five dollars each time they retrieved tables from the floors.	2/2013	2013-40	8

2.	IC partially sustained Union's grievance that PM Servers performing Cashier and Host/Hostess work should be paid Host/Hostess rate and that Hotel improperly laid off Host/Hostesses by directing Hotel to pay additional one dollar per hour to Servers for self-cashiering.	2/2013	2013-42	9
C. <u>Past Practice</u>				
1.	IC denied Union's grievance that Hotel must pay separate set-up and closing fees to Banquet Servers for receptions held before a dinner; IC found that Hotel had established practice consistent with the past practice rule set forth in Schedule A-1.	2/2013	2013-41	9
D. <u>Area Standards and Work Preservation</u>				
1.	IC found that Hotel violated Article 45 and Article 22 by assigning duties performed by Linen Room Supervisor to other bargaining unit employees or non-bargaining unit employees while Linen Room Supervisor was on reduced work week but that since violations were not sufficient to restore Grievant to her original 5-day workweek, separate hearing would be held to determine what, if any, damages Grievant would be entitled to.	2/2013	2013-49	10
2.	IC found that Hotel violated Article 45 by failing to assign loading dock security functions to House Officers who had previously performed the work and instead contracting with an outside company to provide security officers for the area.	2/2013	2013-51	10