

**KANE KESSLER, P.C.**

**666 Third Avenue  
New York, N.Y. 10017**

**(212) 541-6222**

**fax (212) 541-9799**

**Direct dial (212) 519-5154**

**[drothfeld@kanekessler.com](mailto:drothfeld@kanekessler.com)**

***CONFIDENTIAL ATTORNEY/CLIENT  
PRIVILEGED MEMORANDUM***

**DATE:** February 6, 2017

**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 – 2016

---

Annexed hereto is the “Index” to the 2016 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, Lois M. Traub, Robert L. Sacks, Alexander Soric, Jaclyn Ruocco, Jennifer Schmalz, or Michael C. Lydakias.

cc: Vijay Dandapani, President and CEO  
Hervé Houdré, Acting Chairman

**INDEX TO THE 2016**  
**REPORTS OF IMPARTIAL CHAIRPERSON DECISIONS**  
**REPORT NOS. 1 AND 2**

		<u>Report #</u>	<u>Decision</u>	<u>Page(s)</u>
<b>I.</b>	<b>DISCHARGE AND DISCIPLINE</b>			
A.	<u>Workplace Violence/Threats</u>			
1.	IC sustained the proposed discharge of a fifteen (15) year steward for attempting to strike and threatening to stab a coworker.	1/2016	2016-02	3
2.	IC did not approve the proposed discharge of a delegate for engaging in an altercation with a coworker based on insufficient evidence. The IC did, however, issue a three (3) day suspension for making inappropriate communication with a witness.	1/2016	2016-12	3
3.	IC upheld the discharge of a ten (10) year banquet houseman for making threats to a coworker, including an invitation to “go outside and fix this”.	1/2016	2016-29	4
4.	IC sustained the termination of a twenty-nine (29) year houseman for threatening to strike a coworker with a heavy three-pronged extension cord.	2/2016	2016-45	3
5.	IC converted the discharge of a cocktail server to a one (1) week suspension for engaging in an altercation with a guest.	2/2016	2016-46	7
6.	IC ordered the reinstatement of a houseman who was discharged for allegedly assaulting a coworker outside the Union’s office and not on working time, finding that there was no link between the workplace and the alleged misconduct.	2/2016	2016-47	3
7.	IC granted the Union’s motion for a directed verdict where the victim of an alleged assault from the grievant failed to appear for the hearing.	2/2016	2016-49	2

		<u>Report #</u>	<u>Decision</u>	<u>Page(s)</u>
8.	IC upheld the discharge of a public area cleaner who verbally assaulted a coworker she believed was performing work the grievant had already completed.	2/2016	2016-62	8
9.	IC reduced the suspension of a banquet server for directing derogatory and vulgar remarks towards a coworker from six (6) weeks to four (4) weeks.	2/2016	2016-65	4
10.	IC sustained the discharge of an eight (8) year houseman for threatening a coworker where the grievant told a coworker he'd "settle" her, that he "knew things" about her, and that he would "take [her] down in minutes".	2/2016	2016-66	3
11.	IC approved the proposed discharge of a delegate and converted the discharge of a second employee to a written warning following a verbal altercation between the two. The IC found that delegate invited his coworker to fight and was provoking him. The coworker did not make any threats of violence and had a clean disciplinary record.	2/2016	2016-71	5
B.	<u>Time and attendance</u>			
1.	IC sustained the discharge of a twelve (12) year tournant for an improper callout where the grievant failed to provide two (2) hours' notice of her absence in violation of Hotel policy and where she was on a final warning for similar conduct.	1/2016	2016-03	3
2.	IC approved the proposed three (3) day suspension of a delegate who amassed three (3) unexcused absences within a thirty (30) day period in violation of Hotel policy.	2/2016	2016-61	3
3.	In a related decision, the IC approved the proposed discharge of the same delegate for amassing three (3) tardiness infractions following his suspension.	2/2016	2016-70	3

C.	<u>Intoxication, drinking on the job</u>	<u>Report #</u>	<u>Decision</u>	<u>Page(s)</u>
1.	IC upheld the termination of a two (2) year bellman for threatening the kill one manager and sexually harassing another while under the influence of drugs or alcohol.	1/2016	2016-06	2
2.	IC approved the proposed discharge of a six (6) year security officer-delegate for drinking on the job and theft of Hotel property and rejected the delegate's defense that he was enabled by his coworkers and managers.	2/2016	2016-39	3
D.	<u>Theft, theft of time, falsification of records, adding gratuities to guest checks</u>			
1.	IC upheld the discharge of an eight (8) year steward where the grievant was found to have left his shift five (5) hours early on consecutive nights. The grievant also falsified his punch-edit forms on which he indicated that he was present for his entire shift.	1/2016	2016-19	6
2.	IC sustained the discharge of a three (3) year bellman for theft of property and theft of time where grievant stole a coworker's camera stand from the employee locker room and where he failed to return to his work station following his break.	1/2016	2016-33	5
3.	IC found just cause to discharge a four (4) year room attendant who falsified her time records resulting in thirty-two (32) minutes of time theft and an overpayment of fourteen dollars (\$14).	2/2016	2016-37	3
4.	IC approved the proposed discharge of a thirteen (13) year server-delegate for adding an eighteen percent (18%) gratuity to guest checks in violation of Hotel policy.	2/2016	2016-41	5

	<u>Report#</u>	<u>Decision</u>	<u>Page(s)</u>
5. IC converted the discharge of a doorman who was terminated for theft of time to a two (2) week suspension for unilaterally altering Hotel practice where evidence established that, while doormen working the swing shift were entitled to a total of two and one-half (2.5) hours break time per shift, the breaks were supposed to be staggered and grievant combined the breaks at the end of his shift.	2/2016	2016-44	3
6. IC approved the proposed discharge of a ten (10) year server-delegate based on video evidence, check reports and closed checks showing that the delegate either “topped-off” or gave away alcoholic beverages without charging guests.	2/2016	2016-51	2
7. IC sustained the discharge of a four (4) year tournant for sleeping on the job and theft of time where circumstantial evidence established that the grievant slept in a storage closet for forty (40) minutes.	2/2016	2016-63	4
8. IC upheld the discharge of a twenty-eight (28) year lobby attendant for theft of time totaling eighty-seven (87) minutes where video evidence showed the grievant leaving the Hotel without authorization prior to her break, extending her break by forty-four (44) minutes, and leaving her shift early without authorization.	2/2016	2016-69	4
E. <u>Job abandonment, insubordination, threatening behavior</u>			
1. IC found just cause to discharge a six (6) year night auditor who abandoned her shift without waiting for relief in violation of Hotel policy and who, during the disciplinary meeting with the Hotel’s Human Resources Director (“HRD”), threatened the HRD by standing nose-to-nose with her and stating numerous times that the HRD would be “sorry, so sorry”.	2/2016	2016-54	4

	<u>Report #</u>	<u>Decision</u>	<u>Page(s)</u>
2. IC ordered the reinstatement of a server with full back pay and an additional fifteen percent (15%) penalty where the employer was found to have retaliated against the grievant for complaining about abusive schedule changes and an illegal reduction in her hourly pay.	2/2016	2016-57	7

F. Violation of Hotel rules, gross misconduct

1. The IC upheld the discharge of long-term room attendant where the grievant returned to the Hotel intoxicated and while off the clock following a holiday party held at a related property.	2/2016	2016-34	6
2. IC sustained the discharge of a twenty-one (21) year room attendant who engaged in gross misconduct by calling a guest a “yellow bitch” and using obscene language before leaving the Hotel.	2/2016	2016-40	4
3. IC upheld the discharge of a short-term valet attendant for gross misconduct where, without explanation, the grievant closed the valet (depriving the employer of revenue) and left his shift for thirty (30) minutes without first obtaining relief in violation of employer policy.	2/2016	2016-67	5

<b>II.</b>	<b>CONTRACT</b>	<u>Report#</u>	<u>Decision</u>	<u>Page(s)</u>
A.	<u>Subcontracting</u>			
1.	IC found that the Hotel violated Article 45(B) where it subcontracted audio-visual services thereby resulting in a loss to technicians of fringe benefits and a loss to banquet staff of a fifteen percent (15%) gratuity charged on Hotel charged audio-visual charges.	1/2016	2016-05	11
B.	<u>Tip distribution</u>			
1.	After the parties failed to reach an agreement on tip distribution between cocktail servers and other F&B staff, the IC ordered (based on an examination of earnings) that tips be distributed from cocktail server earnings as follows: fifteen percent (15%) of gratuities on alcoholic beverages to be shared with bartenders and bussers/runners; and three percent (3%) with barbacks.	1/2016	2016-10	2
2.	Upon a request for clarification, the IC explained that tips between servers and servers' assistants must be split equally following every shift.	1/2016	2016-11 2016-20	2 2
C.	<u>Past Practice, seniority</u>			
1.	IC found that the Hotel violated past practice and the seniority of a bellman where the Hotel failed to offer the bellman available in-room dining server work.	1/2016	2016-21	2
D.				
1.	<u>Room Quota</u>			
	IC held that the Hotel's established quota was reasonable despite claims from the Union that the Hotel ignored obstacles such as slow elevator service, lack of assistance from housemen, and other factors.	2/2016	2016-38 2016-55R	2 1

E.		<u>Report#</u>	<u>Decision</u>	<u>Page(s)</u>
	1. <u>Clarification of work assignments</u>			
	Relying on the well-established principle respect must be shown to long-standing Hotel practices, the IC found that the Hotel properly staffed in-room-dining servers to work hospitality events taking place in guest rooms and suites. The IC also held, based on an agreement between the parties, that banquet servers must be staffed to work functions held in a Hotel outlet.	2/2016	2016-64	2