

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL 659, ALLIED INDUSTRIAL WORKERS  
OF AMERICA, AFL-CIO,

Complainant,

vs.

S-B MANUFACTURING COMPANY, LTD.,

Respondent.  
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Case VII

No. 22626 Ce-1764

Decision No. 16123-A

Appearances:

Goldberg, Previant & Uelmen s.c., Attorneys at Law, by Mr. Kenneth R. Loebel, for the Complainant.

Quarles & Brady, Attorneys at Law, by Mr. James C. Mallien, for Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.07(5), Wis. Stats.; and, pursuant to notice, a hearing on said complaint having been held at Milwaukee, Wisconsin, on March 22, 1978<sup>1/</sup> before the examiner; and the examiner having considered the evidence and arguments of the parties and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Local 659, Allied Industrial Workers of America, AFL-CIO, herein referred to as Complainant, is a labor organization with offices at 3815 North Teutonia Avenue, Milwaukee, Wisconsin.

2. That S-B Manufacturing Company, Ltd., herein referred to as Respondent, is an employer within the meaning of the Wisconsin Employment Peace Act engaged in the manufacture of hardware and houseware specialties, with offices at 11320 Watertown Plank Road, Milwaukee, Wisconsin.

3. That at all relevant times Respondent recognized Complainant as the representative of certain of its employees including at the relevant times Jeffrey M. Sampolinski, herein referred to as Grievant;

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1/ All dates herein are in 1978 unless noted otherwise.

and that in that regard Respondent and Complainant have been party to a collective bargaining agreement in effect at all relevant times, which provides a grievance procedure not culminating with a method of final and binding resolution of disputes with respect to the interpretation or application of said agreement, and which also provides in relevant part:

". . .

#### ARTICLE 5 - SENIORITY

. . .

Section 5. Loss of Seniority. Seniority shall cease for the following reasons: . . . (b) the employee is discharged for just cause. . . . The term 'just cause' means: (a) that the employee has violated a reasonable and published Company rule or (b) that the employee has violated a provision of this Agreement or (c) that the employee has committed an offense that is against the law, while on Company property or Company time.

. . .

#### ARTICLE 22 - MANAGEMENT RIGHTS

Section 1. Except as otherwise limited by a specific provision of this Agreement, the Management of the plant and the affairs of the Company, and the direction of working forces are vested exclusively in the Employer, including but not limited to the right to hire, the right to discipline or discharge for cause, . . . [and] the right to prescribe and enforce reasonable work rules. . . . The reasonableness of the Company's rules will be subject to the Grievance Procedure.

. . ."

4. That at all relevant times Respondent had published work rules and policies in effect as specified in its Employee Handbook which states in relevant part:

". . .

#### SECTION 2

. . .

#### ATTENDANCE

. . .

People who are absent, or who leave during working hours, or who are tardy too many times may be discharged. This can happen if you are absent, leave during working hours, or [are] tardy three times or more in any one 30-day period, or seven times or more in a 90-day period.

Absences which can be excused, with limitations as outlined herein or [in the] union contract, are:

1. Death in your immediate family
2. Jury duty or subpoena

3. Vacation
4. Marriage
5. National Guard or Military Reserve
6. Approved leaves extending for more than five work days
7. Very serious causes beyond your control. [Sic]
8. Industrial Accident

A note of caution: Even 'excused' absences may be excessive, and if they are, they may be the basis for disciplinary action.

. . .

## SECTION 8

. . .

### PLANT RULES

Other Plant rules are listed below. If you do not follow them, you will be disciplined. (Discipline may range from a warning to being discharged.) Plant rules have been placed into four groups: Minor (Group I) [sic], Important (Group II), Serious (Group III) and Major (Group IV).

#### MINOR RULES (GROUP I)

. . .

7. Excessive absences or tardiness (as defined in the Absenteeism and Tardiness policy).

. . .

#### MAJOR RULES (GROUP IV)

. . .

2. Repeated rule violations during any 6-month period.

. . ."

5. That while a Final Written Warning was in effect for Grievant because of his repeated violations of Respondent's rules, which warning provided he was subject to discharge if he committed another rule violation while it was in effect, Grievant was excessively absent within the meaning of Minor Rules (Group I), rule 7.

6. That on January 13, 1978, Respondent discharged Grievant from its employ for having violated its rules with respect to excessive absenteeism and repeated rule violations.

7. That Complainant thereafter filed a grievance protesting said discharge which grievance was processed through all of the steps of the grievance procedure specified in the collective bargaining agreement mentioned above, without resolution thereof.

On the basis of the above and foregoing findings of fact, the examiner makes and files the following

CONCLUSION OF LAW

That Respondent, by having discharged Grievant for just cause within the meaning of the applicable collective bargaining agreement, did not, and is not, committing an unfair labor practice within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act.

On the basis of the above and foregoing findings of fact and conclusion of law, the examiner makes and files the following

ORDER

That the complaint filed in the above entitled matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 20th day of July, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

On September 2, 1977, Grievant Sampolinski received a final written warning for having had repeated rule violations,<sup>2/</sup> which remained in effect at all relevant times and under which he was subject to discharge for another rule violation. On September 21, 1977, Grievant was warned with respect to his failure to follow work assignments. Grievant was again warned about excessive absenteeism on October 21, 1977. On November 1, 1977, he was again absent on the basis of having a sore eye. Yet again on November 14, 1977, he was off work on the basis of having the flu. On December 8, 1977, Grievant did not come to work because of the weather. For essentially the entire work week of December 19, 1977, Grievant was off because he injured his hand in a fight. On January 10, Grievant was off for the entire day on the basis of his car not starting.<sup>3/</sup> On January 12, Grievant was off the entire day on the basis of having the flu. Grievant reported to work January 13 and worked the full day, at the end of which he was discharged. The discharge was confirmed by letter dated January 13, the body of which states:

"On September 2, 1977, you received a Final Written Warning because of repeated violations of company rules, practices or regulations. At that time you were told that if another violation occurs within 18 months from September 2, 1977, you would be subject to discharge.

Since that date you received a discussion on September 21, 1977, because of failure to follow work assignments. On October 21, 1977, you were informed that you were again having an attendance problem, and were reminded of the final written warning in your file.

Our attendance policy states that if you have three infractions within any thirty day period, you will receive a disciplinary action.

The week of December 19, 1977, you lost 39-3/4 hours from work, because you hurt your hand in a fight. On January 10, 1978, you lost 8 hours claiming the car would not start. On January 12, 1978, you claimed to have the flu and were absent 8 hours.

Because of these three infractions you have again brought yourself within the limits of our disciplinary policy.

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<sup>2/</sup> See Major Rules (Group IV), rule 2, Employee Handbook.

<sup>3/</sup> I take notice of the availability of commercial transportation in the Milwaukee metropolitan area.

Your record in the past year indicates you have conducted yourself in such a manner to utterly disregard this Company's interests, rules and regulations. Your past record leaves no reason to believe you will strive for improvement. Consequently, your employment with S-B Manufacturing Co., Ltd. is terminated as of 4:00 P.M., Friday, January 13, 1978."

Respondent asserts it discharged Grievant for cause within the meaning of the applicable agreement as defined by Article 5, Section 5, in that it asserts Grievant violated reasonable and published work rules with respect to absence and repeat offenses, including Minor Rules (Group I), rule 7, and Major Rules (Group IV), rule 2.

Complainant contends Respondent discharged Grievant for having three unexcused absences the week of December 19, 1977, on January 10 and January 12, and only for said reason. In its view, Respondent should not now be permitted to substitute excessive absenteeism for its original reason. It contends the three absences were, in fact, excused or so justified that they ought to be treated as excused. Further, assuming excessive absenteeism to be properly at issue, it contends the instant excessive absenteeism rules are unreasonable as applied.

#### Discussion

Respondent is not precluded from asserting it had just cause to discharge Grievant because he violated Minor Rules (Group I), rule 7, thereby resulting in a violation of Major Rules (Group IV), rule 2. Respondent's January 13 letter of discharge clearly alleges Grievant's three specified absences (the discharge incident) constituted a violation of its attendance policy which defines excessive absenteeism. Although it would have been clearer for Respondent to allege that Grievant violated its rule against excessive absenteeism, Respondent's meaning is clear. It clearly recited the pendency of the final written warning and Grievant's entire record as the ultimate basis for discharge. Thus, I conclude Respondent's expressed reason for discharge was Grievant's having had an occasion of excessive absenteeism as proscribed by Respondent's rules in the context of a final written warning then in effect. I find no merit in precluding Respondent from asserting this as its basis for discharge.

The central issue in this matter is whether Respondent proved by a clear and satisfactory preponderance of the evidence that it had just cause or cause to discharge Grievant. Under this agreement "cause" or "just cause" is defined in relevant part as whether the employe violated a reasonable and published rule.<sup>4/</sup> Published Minor Rules (Group I), rule 7, subject an employe to discipline if he or she

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<sup>4/</sup> Article 5, Section 5.

is guilty of "[e]xcessive absences or tardiness (as defined in the Absenteeism and Tardiness policy)." Excessive absenteeism is defined by Respondent's published attendance policy which states in relevant part:

". . .

People who are absent, or who leave during working hours, or who are tardy too many times may be discharged. This can happen if you are absent, leave during working hours, or [are] tardy three times or more in any one 30-day period, or seven times or more in a 90-day period.

. . .

A note of caution: Even 'excused' absences may be excessive, and if they are, they may be the basis for disciplinary action.

. . ."

Grievant was absent for almost the entire week of December 19, 1977, and on January 10 and 12. The January 10 and 12 absences were not excused. Although Respondent received Grievant's proffered excuses for those absences, it almost immediately discharged him, citing, in part, those absences as grounds. A clear and satisfactory preponderance of the evidence establishes neither was excused by Respondent. In view of Grievant's record to date, the reason for absence, and duration of the absence, I am satisfied Respondent properly included the absence commencing December 19, 1977, in its determination of excessive absenteeism whether it was excused or not. Therefore, Grievant violated a published employer rule while the final written warning was in effect.

A construction of Respondent's rules which results in a finding the three absences constituted an occasion of excessive absenteeism is entirely reasonable. Grievant lost approximately 55 work hours in a period of less than thirty calendar days, at a time when Grievant should have been vitally concerned about retaining his job. The first prolonged absence resulted from a fight while the second full day of absence resulted from "car trouble." I am satisfied that under the circumstances of this case, the three absences in question appropriately signify Grievant's continuing excessive absenteeism and, therefore, rule 7 as defined is reasonably construed and applied in this case. On the basis of the foregoing, and the record as a whole, I conclude Grievant has repeatedly violated reasonable and published employer rules for which violations Respondent had just cause to discharge him.

Dated at Milwaukee, Wisconsin, this 20th day of July, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II, Examiner