

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Complainant,

vs.

S-B MANUFACTURING COMPANY, LTD.,

Respondent.

Case VII

No. 22626 Ce-1764

Decision No. 16123-B

ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Examiner Stanley H. Michelstetter II having, on July 20, 1978, issued his Findings of Fact, Conclusion of Law and Order with Accompanying Memorandum in the above-entitled matter, wherein he found that the above-named Respondent had not violated the collective bargaining agreement by discharging an employe, and therefore had not committed an unfair labor practice, and wherein he dismissed the complaint; and the Complainant having, on July 26, 1978 filed "exceptions" to the Examiner's Findings of Fact, Conclusion of Law and Order, which the Commission deems to be the equivalent of a timely petition for review within the meaning of Section 111.07(5), Stats; and the Complainant having advised the Commission that it did not desire to file any additional argument in support of its exceptions other than a reply brief; and the Respondent having filed a brief on August 14, 1978; and the Complainant having filed a reply brief on August 28, 1978; and the Commission having reviewed the record, including the petition for review and briefs of the parties, and being satisfied that the Examiner's Findings of Fact, Conclusion of Law and Order with Accompanying Memorandum be affirmed.

NOW, THEREFORE, it is

ORDERED

That the Examiner's Findings of Fact, Conclusion of Law and Order with Accompanying Memorandum in the above-entitled proceeding be, and the same hereby are, affirmed.

Given under our hands and seal at the
City of Madison, Wisconsin this 9th
day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Union in its complaint alleged that the Employer discharged Sampolinski without just cause within the meaning of the collective bargaining agreement existing between the parties, and that therefore the Employer committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act. Following a hearing and the review of the record and briefs filed by counsel for the parties, the Examiner found that the discharge was for cause under the collective bargaining agreement, and that, therefore, the Employer committed no unfair labor practice, and as a result the Examiner dismissed the complaint.

In its petition for review, the Union took exception to the Examiner's decision, contending that the discharge was not for just cause under the agreement and that, therefore, the complaint should have been sustained. In its brief supporting its petition for review the Union, in effect, presented the same arguments it set forth in its brief to the Examiner. More specifically, it is the Union's position that the Employer did not discharge the grievant for excessive absenteeism but rather because the Employer concluded that the grievant engaged in three infractions of the Employer's attendance policy. The attendance policy in relevant part states the following:

" . . .

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."

The three infractions in question occurred on December 19, 1977, January 10 and 12, 1978. In essence, the Union contends the December 19 absence of the grievant was excused, and therefore not an infraction. It is argued by the Union that, since the grievant only engaged in two rather than three infractions, the grievant did not violate the Employer's plant rules pertaining to attendance and therefore the discharge of the grievant was not for just cause.

The Examiner concluded, and we affirm, the Employer's January 13, 1978 letter of discharge "clearly alleges Grievant's three specified absences (the discharge incident) constituted a violation of its attendance policy which defines excessive absenteeism." We also agree with the Examiner's conclusion, even though the Employer did not so specifically set forth in its letter, that the grievant violated Plant Rule 7 regarding excessive absenteeism. We agree with the Examiner that it is clear from the letter that "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."

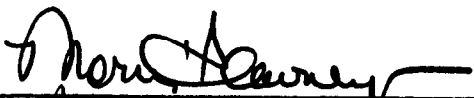
Further, we agree with the Examiner's conclusion, contrary to the Union's position, that the December 19 absence of the grievant constituted an infraction of Rule 7, even though said absence may have been excused. We are persuaded in this regard by the rule itself, which provides the following note of caution:

" . . . Even 'excused' absences may be excessive, and if they are, they may be the basis for disciplinary action."

Based on the above we are satisfied that, under the collective bargaining agreement, the Employer had just cause for discharging Sampolinski, and therefore we have sustained the Examiner's decision in all respects.

Dated at Madison, Wisconsin this 7th day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner