

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
EGGERS INDUSTRIES, INC. :
and : Case 23
: No. 41265
: A-4367
LOCAL UNION 2832, MIDWESTERN :
INDUSTRIAL COUNCIL, UNITED :
BROTHERHOOD OF CARPENTERS AND :
JOINERS OF AMERICA, AFL-CIO :
- - - - -

Appearances:

Mr. Conrad Vogel, Assistant Business Representative, Midwestern Industrial Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, for the Union.

Mr. Gary Milske, Personnel Manager, Eggers Industries, for the Company.

ARBITRATION AWARD

Local Union 2832, Midwestern Industrial Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein the Union, pursuant to the terms of its contract with Eggers Industries, herein the Company, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and decide a dispute between the parties. The Company concurred with said request and the undersigned was so designated. Hearing was held in Neenah, Wisconsin on January 18, 1989. A stenographic transcript of the proceedings was received on January 25, 1989. The parties filed post-hearing briefs by February 17, 1989.

ISSUE:

The parties stipulated to the following issue:

Was Troy Nitke, the grievant, unjustly disciplined on May 18, 1988? If so, what is the appropriate remedy?

BACKGROUND

On May 18, 1988 the Company discharged Nitke. At the time of his discharge, Nitke worked on the second shift and was classified as a Sander-Checker on the Edge Strip Assembly Line. The Edge Strip Assembly Line consists of a five employe crew and produces door cores. The first employe is a material handler. The second employe is a double end tenoner saw operator, herein saw operator, who cuts the door cores to the appropriate length. The third employe clamps the end rails to the cores and cuts the cores to the appropriate width. The fourth employe clamps the edge strips to the cores. The fifth employe is the sander-checker who sends the doors through the sander, stamps the doors with the order number and checks the dimensions of the doors for accuracy.

On May 16, 1988, 142 doors were cut to the wrong length on the ESA line. The doors were from four different orders and required six different setups.

When the Company investigated the matter, it found that a pin had broken in the double end tenoner saw which resulted in the wrong length being cut even though the gauges on the saw showed the correct setting for length. On May 18, 1988 the Company issued a Disciplinary Action Notice to Nitke which read as follows:

Rule #20-Employees are expected to know the job details of their particular work (includes achieving acceptable time standard efficiencies) and to read and follow all instructions on job tickets carefully. Employees shall be held responsible when the quality or accuracy of their work indicated failure or laxity to comply with this rule. Mr. Nitke failed to check the dimensions on 142 doors that

were being manufactured incorrectly due to a broken pin on a saw. Consequently, 142 doors will need to be trimmed to length by hand

Approximately 18 1/4 hours of unnecessary labor.

Note: This is your 4th violation of our General Rules of Conduct within the last 12 months. Our General Rules of Conduct state that "Four (4) offenses of any rule or combination of rules during a 12 month period will result in automatic discharge. Therefore, I have no alternative but to terminate your employment with Eggers Industries effective immediately.

Nitke had received Disciplinary Action Notices, which had not been grieved, on July 21 and October 12, 1987 and April 29, 1988. Nitke filed a grievance contesting his discharge, which grievance became the basis for the instant matter.

Marty Berben testified that, when he worked on the ESA line, the saw operator would measure the first door run after making a setup. Scott Van Dinter testified that, when he was the saw operator, his foreman told him to measure the first door run after every setup. Mark Tillman testified that, when he operated the saw, he checked the doors to be sure they were cut to the proper length.

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE TEN - SENIORITY

. . .

10.06 Loss of Seniority: An employee shall lose his or her seniority for the following reasons:

. . .

- (b) If the employee is discharged for just cause. (Unjust discharges shall be considered under Article Thirteen of this Agreement.

Position of the Union

The Union argues that Nitke's discharge should be overturned because the Company failed to enforce its rules and to assess discipline in a consistent and equitable manner. The saw operator also has the duty to check the length of a door after each setup, but the operator was not disciplined. Nitke should be reinstated and made whole for any losses resulting from his discharge.

Position of the Company

The Company contends that Nitke's discharge should be sustained. His primary job function was to check and mark door cores by measuring dimensions at the beginning and end of each setup. Nitke failed to check any of the doors and offered no acceptable explanation for such failure. The saw operator was not disciplined because the saw gauges indicated the correct setting and the incorrect length was caused by a broken pin in the saw.

DISCUSSION

There is no dispute over the facts that on May 16, 1988 there were 142 doors cut to the wrong length, and, that Nitke, as the Sander-Checker, had the duty of checking the doors for size. The 142 doors involved 6 different orders and Nitke was supposed to check the doors for size at both the beginning and the end of each order. The only dispute arises over whether Nitke's discharge was improper because the saw operator was not disciplined also.

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The Company chose to not discipline the saw operator after their investigation revealed that a broken pin resulted in the wrong length being cut even though the saw gauges showed the saw was set to cut the right length. Based on the testimony of three employees who previously had worked on the ESA line, the Union asserts that the saw operator should have measured the first door cut after each setup and that the saw operator's failure to do so should have resulted in discipline just as Nitke was disciplined.

The saw operator made the correct setups on May 16, 1988. While the saw operator's failure to measure the first door run after each setup may have been a basis to warrant the receipt of a Disciplinary Action Notice, such is questionable. There is no evidence in the record to show that said saw operator had ever been told he was to measure the first door run after a setup.

Even though a previous saw operator had been so instructed, it can not be assumed the current saw operator had received those instructions. In the absence of proof that the saw operator had been so instructed and in light of the broken pin, the Company was neither unreasonable nor inconsistent when it disciplined Nitke but not the saw operator. The record is clear that one of Nitke's main, if not primary, responsibilities was to check the dimensions of the door at the beginning and end of each setup run. Nitke failed to make those checks on at least 12 occasions on May 16, 1988 and offered no explanation for such a failure.

Even if the Company was fortunate enough to be able to correct the error in the length of the doors in the next production operation without additional cost, the fact remains that Nitke failed to properly perform the duties of his job. Nitke's neglect of his responsibility to check the dimensions of the

doors did constitute just cause for the Company to issue him a Disciplinary Action Notice. Because said Disciplinary Action Notice was the fourth such notice received by Nitke in a twelve (12) month period, he was discharged in accordance with the established and publicized Company rules of conduct. The undersigned finds no basis for overturning the Company's actions in this matter.

AWARD

That the grievant, Troy Nitke, was disciplined for just cause on May 18, 1988; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 10th day of April, 1989.

By _____
Douglas V. Knudson, Arbitrator