BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GREENHECK FAN CORPORATION	
and	Case 27 No. 41138 A-4352
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL NO. 565	

Appearances:
Mr. Jon G. Krueger, Director, Human Resources, on behalf of the Company.
Mr. Paul Lund, Business Manager and Financial Secretary/Treasurer, on behalf of the Union.

ARBITRATION AWARD

The above entitled parties, herein the Company and Union, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on January 12, 1989 in Schofield, Wisconsin. The hearing was not transcribed and both parties filed briefs which were received by February 14, 1989. Thereafter, a dispute arose between the parties over certain factual matters asserted in the Company's brief, with the Union presenting its position in a March 30, 1989 letter and the Company responding in an April 26, 1989 letter.

Based upon the entire record, I issue the following Award.

ISSUES:

The parties have jointly agreed to the following issue:

> Under the collective bargaining agreement between the parties dated August 15, 1987, is an employe required to work on the working day preceding vacation and the working day following vacation, to be eligible to receive pay for a holiday that falls during the vacation period.

DISCUSSION:

The parties disagree on what specific days employe Russ Schoenman was on vacation with the Union arguing that he was on vacation during the week of July 4, 1988 1/ and the Company asserting that he vacationed the week before. Irrespective of the specific days in issue, it is undisputed that his vacation encompassed a contractually recognized paid holiday - July 4 - and that on the day before he was to start his vacation he called the plant to report he was sick and could not work that day.

Thereafter, Personnel Administrator Terry Goldback on July 7 issued the following memorandum to certain Union representatives:

> Russ will be paid holiday pay for July 4, 1988 despite the fact that he did not work the working day preceding the start of his vacation which preceded the July 4 holiday.
>
> This payment is made because of a recent inadvertent payroll error which paid holiday pay in a similar situation. This payment to Russ is not to be considered precedent setting.
>
> It is the Company's position should vacation precede, follow or surround a holiday(s) you must work the scheduled work day prior to going on vacation and the scheduled work day after completion of your vacation to be eligible for holiday pay.

On the same day he also issued the following memorandum to all plant employes:

> To be eligible for holiday pay you must work the working day preceding and working day following the holiday.
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> Should vacation precede, follow, or surround a holiday you must work the scheduled work day prior to going on vacation and the scheduled work day upon completion of your vacation

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1/ All dates herein after refer to 1988.

to be eligible for holiday pay.

Absence, other than tardiness, on the work day preceding or the work day following a holiday due to illness or accident will require a doctor's slip covering the absence before payment will be made.

After meeting and discussing the matter with Company representatives, the Union filed the instant grievance on July 15 claiming that the Company's July 7 notice violated Article VI, Section B, of the contract because it attempts to establish an additional qualification regarding the granting of holiday pay which is not provided for in the contract. It thus argues that the key phrase "working day" in Article VI, Section B, refers to the plants' working day, not the employes' individual working day; that in the absence of any past practice or bargaining history to the contrary, "the usual or traditional intention of penalizing the employe who 'stretches' his holiday should apply" and that it thus is inapplicable to situations like Schoenman's since he only stretched his vacation - not his holiday. Going on, it argues that "If the Company is intending to create a penalty for vacation 'stretching', they should not be permitted to do so except by seeking to amend the vacation article in negotiations" and that if an employe takes off an approved vacation day, it by definition has been "excused" by the Company under this very same language. Giving all this, the Union contends that the Company has violated the contract and as a remedy it requests that the Company's July 7 policy be rescinded and that the Company be ordered to send out a notice to that effect to all employes.

The Company sees things differently asserting that the grievance should be denied because the phrase "working day" refers to an employe's "working day" - not the plant's; that the contract expressly lists exceptions to this "working day" requirement and that being off on an approved vacation is not one of them; that the Union is now attempting to seek in arbitration something which it does not have in the contract; and that arbitrable authority supports its position, hence warranting dismissal of the grievance.

This case turns upon Article VI of the contract, entitled "Paid Holidays", which provides in pertinent part:

. . .

B. Each employee shall receive eight (8) times his regular hourly rate of pay as holiday pay for each of the above recognized holidays or days observed as such. All work done on any of the foregoing holidays or days observed as such shall be compensated at the rate of two (2) times the employee's regular hourly rate of pay in addition to the employee's holiday pay. To be eligible for pay for that holiday the employee must work the working day preceding and the working day following the holiday, unless the lost time is due to injury incurred during the working hours on either of those days or is excused by the Company.

C. If a paid holiday falls on a Saturday, the employees shall have the previous Friday as the holiday with pay, and if the paid holiday falls on a Sunday, the employees shall have the following Monday as the holiday with pay.

D. When an employee is absent on the day preceding or the day following a paid holiday due to illness, that employee will receive holiday pay if he/she presents a slip from his/her doctor and such absence due to illness commenced no more than sixty days prior to such holiday.

. . .

In agreement with the Company, I find that this language refers to an employe's "working day" since its entire thrust is to make sure that employes show up for work in order to avoid stretching out their holidays -- something which would not be the case if this phrase referred to the plant's "working day". The Company is also right in noting that this language has certain exclusions and that vacation is not one of them. 2/

But that does not necessarily mean that the Company must prevail; this language also contains the key phrase unless otherwise "excused by the Company", hence indicating that there are other contingencies which mitigate against the requirements of this language. Here, Schoenman called in sick on the last day before he was to start his vacation and the Company accepted that "excuse" since it makes no claim that he was not sick. That being so, he was entitled to be treated the same as all other employes who are sick either

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2/ Since this case turns upon this specific language, there is no point in discussing other arbitration cases which have involved different language and different results from the one reached here.

before or after a holiday. In those circumstances, Section D goes on to provide:

> When an employee is absent on the day preceding or the day following a paid holiday due to illness, that employee will receive holiday pay if he/she presents a slip from his/her doctor and such absence due to illness commenced no more than sixty (60) days prior to such holiday.

Here, there is no evidence that Schoenman either produced a doctor's note or that he was asked to do so by the Company. Since he was paid for the July 4 holiday anyhow, the question as to him is moot.

In the future, the Company can demand a doctor's note in similar circumstances since it is entitled to police the contract's anti-stretching rule. But if employes are in fact sick and if they do produce a doctor's note as requested, they are entitled to their holiday pay since their absences then will be "excused". The same is true for any other contractual benefits: if employes are entitled to them (such as vacations) they by definition must be "excused" by the Company, hence negating the general proposition that one must work before and after a holiday.

In light of the foregoing, it is my

AWARD

That while employes generally must work on the working day preceding or following one's vacation in order to qualify for a holiday that falls during that vacation period, an employe who is otherwise sick on those days and whose excuse is accepted by the Company is nevertheless entitled to holiday pay pursuant to Article VI, Section D.

Dated at Madison, Wisconsin this ____ day of June, 1989.

By _____
Amedeo Greco, Arbitrator

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