

BEFORE THE ARBITRATOR

- - - - -
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 INTERNATIONAL ASSOCIATION OF :
 MACHINISTS AND AEROSPACE WORKERS, :
 LODGE NO. 1855 :
 : Case 31
 and : No. 41687
 : A-4403
 J.W. HEWITT MACHINE COMPANY :
 :
 - - - - -

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at
 Law, 788 North Jefferson, P.O. Box 92099, Milwaukee, Wisconsin 53202,
 by Mr. Frederick Perillo, appearing on behalf of the Union.
 Di Renzo & Bomier, Attorneys at Law, 231 East Wisconsin Avenue, P.O.
 Box 788, Neenah, Wisconsin 54957-0788, by Mr. Howard T. Healy,
 appearing on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and Company or Employer
 respectively, are signatories to a collective bargaining agreement providing
 for final and binding arbitration of grievances. Pursuant to a request for
 arbitration, the Wisconsin Employment Relations Commission appointed the
 undersigned to hear a grievance. A hearing was held on March 15, 1989 in
 Neenah, Wisconsin. The hearing was not transcribed and briefs were received by
 April 18, 1989. Based on the entire record, I issued the following Award.

ISSUES

The Arbitrator frames the procedural issue as follows:

Is the grievance barred based on the timeliness requirements in the contract?

The parties stipulated to the following substantive issue:

Was there just cause for the termination of Vic Hammer? If not, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1988-91 collective bargaining agreement contains the following pertinent provisions:

ARTICLE XI

Discharge

Section 1. No employee will be discharged, disciplined, or suspended without just cause.

Section 2. At the time of discharge for any reason, or suspension, or discipline, the Company will, in writing, notify the chairman of the Shop Committee of the name of the employee and the reason for his discharge, discipline or suspension.

All disciplinary action taken under the provisions of this Article shall be subject to the grievance procedure outlined in Article XVI. If through the grievance procedure it is determined that any employee has been wrongfully discharged, or disciplined excessively, the employee shall, if wrongfully discharged, be reinstated with full pay for all pay lost, and if disciplined too severely, payment of

back pay for the time found to be excessive. It is understood that the Shop Committee and the representative of the International Association of Machinists and Aerospace Workers prior to filing the grievance have the right to discuss the matter with Management.

. . .

ARTICLE XVII

Grievances

Section 1. Should any differences arise between the Company and the employees or the Union, either individually or collectively, as to the meaning or application of any provision of this contract, then an earnest effort shall be made to settle such differences at the earliest possible time by the use of the following procedure:

A. The employee or employees, together with the Union Steward in the department where the grievance occurred, shall discuss the matter with the foreman in charge within three (3) days of the grievance and attempt to settle the grievance.

B. If the procedure outlined above does not settle the matter, written notice of the grievance must be filed with the Management within seven (7) working days describing the grievance. The Superintendent then shall attempt to settle the grievance within one (1) working day, if possible. If the grievance is settled, the Findings shall be returned to the Union. Grievances settled in this manner shall be signed by both parties and shall be final.

C. If the grievance has not been settled within two (2) working days, the matter shall be discussed with Management who will meet with the Union Shop Committee for the purpose. In the event the parties cannot agree after ten (10) working days, the International Representative of the Union, together with the Shop Chairman, will then attempt to settle the matter with Management.

If settlement cannot be reached with Management after seven (7) working days, then either party may refer the dispute to arbitration. ...

. . . .

WORK RULES

A minimum number of Plant Rules have been established. These are intended for the welfare and protection of each and every employee and are basic to the orderly conduct of daily business. Each rule has been carefully considered and will be enforced uniformly and fairly on a plant wide basis.

There are two general classifications of violations of these work rules: MAJOR and MINOR.

A MAJOR VIOLATION WILL RESULT IN SERIOUS DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION. The following rules fall into this classification:

. . . .
2. Disobedience or gross insubordination.

. . . .
10. Restricting output.

FACTS

The Employer's business is the repair and machining of rolls used in paper-making machines. The grievant, Victor Hammer, was employed by the Company for 23 years before he was terminated on October 31, 1988. 1/ At the time of his discharge, Hammer was classified as a "helper." This job involved cleaning, sweeping and assembly work.

Hammer was discharged for four separate instances of allegedly refusing to perform specific work assignments. Each of these instances arose while the Plant Superintendent, Dave Senecal, was on vacation and Hammer was receiving his daily work assignments from Foreman Bill Johnson. Johnson had been promoted out of the bargaining unit to the foreman position approximately two weeks before the incidents arose.

The first incident occurred on October 14. On that date Johnson told Hammer to clear an area on the shop floor for a paper roll that was to be delivered that afternoon by a customer (Willamette). Hammer was familiar with the size of the Willamette roll from previous experiences and knew that it was larger than other rolls that come into the shop. Hammer estimated that it takes 1-2 hours to clear a space for the Willamette roll. Later that afternoon Johnson became aware that Hammer had not cleared such a space, so he again told Hammer to clear a space for the Willamette roll. Hammer told Johnson that he had a spot picked out on the shop floor where he thought the roll would fit, but Johnson told Hammer that the space Hammer had in mind (for the roll) was not big enough. It is undisputed that Hammer never cleared a space for the roll. Hammer's stated reason for not clearing a space for the roll as directed was that he feared if he did, another employe would put something in the space he had cleared.

The second incident occurred on October 17. About 11:00 a.m. on that date Johnson told Hammer to clear an area on the shop floor for a paper roll that was to be delivered at 1:00 p.m. by a customer (Midtec). Hammer did not clear a spot for the roll as directed. His stated reason for not doing so was that he planned to place the roll on the washroom track and therefore thought he did not need to clear a space. Johnson testified that he told Hammer not to use it (i.e. the washroom track). The Midtec roll did not arrive until 2:40 p.m. After it was delivered, Hammer, who had been assigned shipping and receiving duties for that shift, should have unloaded the truck. He neither unloaded it nor began the unloading process. Since Hammer did not unload the roll, the truck driver had to wait for the second shift to start at 3:00 p.m. and Hammer to be replaced by another employe before the unloading process could begin. The truck unloading and moving of rolls to make a space for the roll was left to the second shift helper. Hammer testified that another reason why he did not clear an area for the roll as well as unload the roll from the truck was because the overhead crane necessary to do both jobs was in use elsewhere in the plant from 11:00 a.m. until 2:55 p.m.

The third incident occurred on October 21. That day Hammer only worked a half-day because of a dental appointment. From 8:00 to 10:00 a.m., Hammer worked with a grinderman. After that job ended at 10:00 a.m., Hammer went on general shop cleanup and was told by Johnson to move a Mead vacuum box out of the aisle so that no one would trip over a shaft in the box that was sticking out into the aisle. This box could be moved by hand. Hammer never made any attempt to move the box. His stated reason for not doing so was that at the time he was helping another employe, namely a grinderman. Johnson testified that at the time he told Hammer to move the box, Hammer was not working on anything else. A half hour later at 10:30 a.m., Johnson directed Hammer to remove bolts from an engraving roll. Hammer did not complete this task. At the time he left work at 11:00 a.m. he had removed 10 of the 70 bolts in the engraving roll. Hammer did not tell Johnson before he left work that he had not moved the vacuum box or finished taking the bolts out of the engraving roll. Hammer's time card for that day, which he filled out, indicates that from 10:00 to 11:00 a.m. he was working on general shop cleanup.

The fourth incident occurred on October 24. On that date Hammer spent four hours washing a Proctor & Gamble suction roll. This procedure involves blowing dried paper fiber and pulp out thousands of holes in the surface of the suction roll with pressurized water; then, the roll is blasted with a high pressure air gun. Hammer admits he was out of his wash gear at 2:45 p.m. when he told Johnson the roll was washed. Hammer further admits that he left the washroom a mess contrary to procedure and made no effort to clean it up after using it. Hammer testified that he spent the 15 minute period between 2:45 and

1/ All dates hereinafter refer to 1988.

3:00 p.m. filling out his daily time card. Johnson and Gerald Poss, Vice President of Manufacturing, testified it takes one minute, not 15, to fill out a time card. After Hammer's shift ended, management officials determined that the roll Hammer had washed was not properly cleaned, so it was rewashed by another employe.

The next day, October 25, Plant Superintendent Senecal returned to work and Johnson told him of the above four incidents with Hammer. Afterwards, Johnson reduced his version of these four incidents to a written memo. The next day, October 26, a meeting was held with labor and management representatives in attendance wherein Hammer was informed of the charges against him and the facts were reviewed. At the conclusion of that meeting, Senecal placed Hammer on indefinite suspension pending review of his work status. Effective October 31, Poss converted Hammer's status from indefinite suspension to discharge. The discharge letter provided in pertinent part:

...In all four instances, Vic's explanation at best was to justify his actions which were contrary to instructions given by his supervisor. At no time do we believe he tried to follow instructions. It is our opinion that Vic deliberately did not follow instructions given to him by his supervisor.

We have had several meetings over the years pertaining to the same problem involving Vic. He has tested us numerous times and it has been explained to him by his supervisors should he continue to perform in this manner he would be terminated.

Under the circumstances Vic has violated Major Work Rules #2 and #10. Violation of either or both rules can result in termination. After careful review of the discussions during the October 26, 1988 meeting, it has been determined that Vic Hammer will be terminated effective October 31, 1988.

Poss testified he considered each of the four incidents involved here, in and of themselves, to constitute grounds for discharge. Poss further testified that in making the decision to discharge Hammer, he (Poss) considered Hammer's past work record (which included a five day suspension in 1987 and numerous written and oral warnings for poor work habits and failure to follow instructions), the fact that he had counseled Hammer on three separate occasions to clean up his act or be discharged, and Poss' view that Hammer was testing a new foreman.

Hammer grieved his discharge on November 4 and Poss denied it on November 8. On November 28, Poss sent a memo to Union President Joe Wilfling wherein the Company indicated that it considered four grievances, one of which was the instant grievance, to be closed based on the Union's alleged failure to timely process them through the grievance procedure. On December 5, Poss responded with the Company's third step answer to Hammer's grievance. The fourth step grievance meeting with the Union's International Representative was held on December 7. The grievance was not resolved at this meeting and the Union requested arbitration of the grievance on January 5, 1989. Poss responded to the Union's request for arbitration in a letter dated January 9, 1989, which addressed both the merits and timeliness aspects of Hammer's grievance.

POSITIONS OF THE PARTIES

The Union initially contends that the County's timeliness objection is frivolous. In support thereof it notes that the Company did not contend at hearing that the grievance was untimely filed or that it had been processed in an untimely fashion along the steps of the grievance procedure. Instead, the Company's contention was simply that the grievance had not been referred to arbitration in a timely fashion. In this regard the Union acknowledges that 29 days elapsed from the last step of the grievance procedure until the time it requested arbitration. Be that as it may, the Union asserts it nevertheless complied with the literal requirements of Article XVII, Section 1,C, which requires only that a request for arbitration be made "after seven (7) working days" and does not specify any time after which a request for arbitration will be late or untimely. The Union contends that its request for arbitration here was made "after" seven working days (of the last step of the grievance procedure), so it was in accordance with the contract. With regard to the merits, the Union's position is that the Company did not have just cause to discharge the grievant. According to the Union, the evidence herein does not substantiate the four separate charges against the grievant. Rather, it is the Union's view that on each of the four occasions when the grievant was allegedly disobedient and insubordinate he was given inconsistent instructions or was simply attempting to follow his instructions to the best of his ability. The Union therefore contends there is no evidence of a willful refusal to follow direct orders and hence no just cause for discharge. As a remedy, the Union seeks to have the grievant reinstated with full back pay.

The Company initially contends that the grievance is untimely based on the Union's failure to follow the timeliness requirements in the contract. The Company raises two contentions in this regard. First, the Company notes that pursuant to the grievance procedure, the Union's request for the third step grievance meeting is to occur ten working days following the Company's second step answer. The Company contends that did not happen here. Next, the Company submits that the Union did not refer the unresolved grievance to arbitration in a timely fashion because the Union's request for arbitration was filed more than seven working days after the fourth step grievance meeting. With regard to the merits, it is the Company's position that the grievant was properly discharged for multiple instances of serious misconduct, specifically refusing without valid excuse to follow direct work instructions on four separate occasions. According to the Company, the grievant's lame excuses and attempted explanations did not explain his refusal to follow specific orders and perform his job assignments. The Company contends each of the four instances of disobedience constituted a separate violation of Major Work Rule 2 and 10 justifying serious discipline (up to and including discharge). Hence, in the Company's view, it is not necessary to find that the grievant committed four separate acts of disobedience in order to sustain the discharge. The Company further argues that the grievant's length of service should not serve as a mitigating factor herein because this factor is compromised by the grievant's prior work record. The Company's position is that the grievant's work record shows a pattern of poor performance, refusal to perform job duties, refusal to work in a manner consistent with company policy and directives, and refusal to follow instructions from supervisors. The Company therefore submits that the grievant discharged himself by engaging in the conduct complained of.

DISCUSSION

Timeliness

The timeliness issue contains two parts. The first involves the Union's alleged failure to timely process the grievance after the Company's second step answer on November 8 and the second involves the Union's alleged failure to timely refer the grievance to arbitration. These contentions are addressed below.

It is undisputed that the grievance itself (which was filed November 4) was timely filed under the time limits specified in the contract (i.e. "seven (7) working days"). The Company's denial of the grievance was dated November 8. On November 28, the Company notified the Union that it considered four grievances, one of which was this grievance, to be closed based on the Union's alleged failure to process them through the grievance procedure in a timely fashion.

Article XVII, Section 1, C, provides that "If the grievance has not been settled within two (2) working days" (which of course was the case here), "the matter shall be discussed with Management who will meet with the Union Shop Committee for that purpose." Here, neither the Union nor the Company immediately initiated such a "discussion" of the grievance following Poss' denial of same on November 8, so no "discussion" had been held at the time Poss sent his letter of November 28. Contrary to the Company's contention though, the undersigned is not persuaded that the Union's failure to initiate such a "discussion" constitutes grounds to bar the grievance from arbitration on the merits. The contractual basis for this decision is found in the next line of Article XVII, Section 1, C, wherein it provides: "In the event the parties cannot agree after ten (10) working days, the International Representative of the Union, together with the Shop Chairman, will then attempt to settle the

matter with Management." Under this language, it is explicit that if the grievance is not resolved at the "discussion" stage, and implicit that if no "discussion" occurs between the parties, the grievance simply proceeds to the next step of the procedure, namely the grievance meeting with the Union's International Representative. Such was the case herein. That being so, it is held that even though the Union did not initiate a "discussion" of the instant grievance with management following Poss' denial of same on November 8, this omission did not bar the grievance from proceeding further. This is because the grievance procedure specifically contemplates that unresolved grievances proceed next to a grievance meeting with the Union's International Representative. Consequently the undersigned declines to dismiss the grievance on this timeliness basis.

The Employer's second procedural objection is that the Union allegedly failed to timely refer the grievance to arbitration. In this regard, it is undisputed that the Union filed for arbitration on January 5, 1989, 16 working days and 29 calendar days after the fourth step grievance meeting with the Union's International Representative was held on December 7. Citing the language in Article XVII, Section 1, C, that either party may refer the dispute to arbitration "after seven (7) working days," the Company infers that the arbitration request was late and thus the grievance is barred.

Black's Law Dictionary defines the word "after" as "later, succeeding, sub-sequent to, inferior in point of time or of priority or preference." Applying this definition herein, the word "after" (as in the phrase "after seven (7) working days") is interpreted to mean that a request for arbitration cannot be made in the first seven days, but only on or after the eighth day. The Company's suggestion that to be considered "after" seven days, a demand for arbitration must be filed up to and including the seventh day flies in the face of this meaning. This is because only upon the eighth or some succeeding day can a demand for arbitration be made, because only the eighth and succeeding days are after the seventh day.

As noted above, the contract provision in issue merely provides that a request for arbitration may be made "after seven (7) working days"; it does not specify any time after which a request for arbitration will be late or untimely. That being so, this provision says nothing whatsoever about when the time for filing a demand for arbitration will no longer be valid. Given the foregoing, it is held that the Union's filing for arbitration herein, which occurred 16 working days and 29 calendar days after the fourth step grievance meeting, complied with the literal requirements of Article XVII, Section 1, C. Accordingly, the grievance is not barred from arbitration on this procedural ground either. Hence, the grievance is held to be arbitrable.

The Merits

Having so found, attention is turned to the substantive merits of the grievance. The stipulated issues requires a determination whether the Company had just cause to discharge the grievant. Two elements are involved in such a determination. The first is that the Company demonstrate that the grievant committed acts in which the Company has a disciplinary interest, and the second is that the Company show that the discipline imposed reasonably reflected its disciplinary interest in the grievant's conduct.

It is axiomatic that employees are to follow supervisory orders and perform assigned work regardless of whether or not they agree with them. The reason for this is obvious; there can hardly be a more serious challenge to supervisory authority, and hence to the Employer's ability to direct the work force, than the refusal to obey a supervisory order and perform assigned work. Absent a safety issue or other mitigating factor, employees are to obey supervisory orders and perform assigned work so that the plant is operated in an orderly and efficient manner. There is no question then that the refusal of a direct supervisory order and failure to perform assigned work can be considered insubordination. It therefore follows that the Employer has a direct interest in ensuring that employees follow supervisory orders and perform assigned work. The issue here regarding the first element of the just cause determination turns, then, not on the Company's interest in ensuring that employees follow supervisory orders and perform assigned work, but instead on whether the grievant in fact followed supervisory orders and performed assigned work.

Hammer was discharged for four separate instances of allegedly refusing to perform specific work assignments. At hearing, Hammer responded in detail to these charges.

Certain basic facts in each of the four incidents in issue are undisputed. With regard to the first incident which occurred on October 14, Hammer admits he did not clear a space for an incoming roll as directed. With regard to the second incident which occurred on October 17, Hammer admits he did not clear a space for an incoming roll as directed and did not unload the roll from the delivery truck. With regard to the third incident which occurred on October 21, Hammer admits he did not move the Mead vacuum box out of the aisle as directed and did not finish taking the bolts out of the engraving roll. With regard to the fourth incident which occurred on October 24, Hammer admits he spent four hours washing a roll which was later rewashed, was out of his

wash gear 15 minutes before the end of his shift, left the washroom a mess after getting out of his wash gear and spent 15 minute filling out his daily time card.

Having said that, Hammer offered justifications for his actions in the first three incidents which, in his opinion, excuse the fact that he failed to obey direct work orders and perform his assigned work. Hammer's justifications of these incidents is addressed below.

Hammer's stated reason for not clearing a space for the Willamette roll on October 14 as directed was that he feared if he did, another employe would put something in the space he had cleared. This excuse though, which the Union characterized as a planning strategy, does not justify Hammer's refusal to obey his foreman's direct order. What Hammer should have done was to clear the area as directed. If another employe used the spot Hammer had cleared, that could have been dealt with accordingly. What happened here though was that the foreman told Hammer twice in direct and easily understandable language to clear a space for the roll. After the second order, Hammer told Johnson he had picked out a spot where he thought the roll would fit and the two men evidently discussed it because Johnson ended up telling Hammer that the spot Hammer had in mind for the roll was not big enough. This put Hammer on notice that his original plan for placement of the roll was not acceptable to Johnson and he (Hammer) was obligated to clear a space for the roll as directed. However, not only did Hammer not clear a space for the roll but he never even started clearing one even though by his own admission it was a one to two hour job to do so. Therefore, given the lack of a valid excuse, it is held that Hammer was disobedient in failing to follow his foreman's work instruction to clear a space for the Willamette roll.

Hammer's stated reason for not clearing a space for the Midtec roll on October 17 as directed was that he planned on placing the roll on the washroom track. However, Johnson told Hammer not to do this (i.e. place the roll on the washroom track), so Hammer was put on notice that placing the roll on the washroom track as he originally planned was not acceptable to Johnson. 2/ That being so, Hammer knew Johnson wanted him to clear an area for the roll; not simply put it on the washroom track.

Another justification cited by Hammer for not clearing a space for the roll and not unloading the roll from the truck after it arrived was that the overhead crane necessary to do both jobs was being used elsewhere. In this regard the Union notes that the Company did not offer any evidence to rebut Hammer's claim that the crane was busy. As a result, the undersigned has no reason to discredit Hammer's testimony that the overhead crane was in use elsewhere in the plant from the time the delivery truck arrived at 2:40 p.m. until the end of the first shift at 3:00 p.m. (i.e. a 20 minute period). In light of this un rebutted testimony then, it is held that Hammer offered a plausible explanation as to why he did not unload the roll from the truck after it arrived at 2:40 p.m. 3/ The question of whether the crane was in use that day for the latter half of Hammer's shift is a different matter though because Hammer's testimony on this point was inconsistent. He first testified that the crane was continuously in use by other employes from 11:00 a.m. (the time he was told to clear a space for the roll) until 2:55 p.m. (when his shift ended), but he later testified he did not know if the crane was in use all day. Obviously the latter testimony undercuts the former. Given the grievant's inconsistent testimony on this critical point, together with his acknowledgement that he never raised the contention that the crane was in use that day from 11:00 a.m. until 2:55 p.m. prior to the arbitration hearing, the undersigned does not credit the grievant's testimony that the crane was in use that day from 11:00 a.m. on. That being so, the grievant did not offer a plausible explanation as to why he failed to clear a space for the roll between 11:00 a.m. and the time the truck arrived at 2:40 p.m. In summary, then, it is held that while Hammer offered a plausible excuse for not unloading the roll from the truck at 2:40 p.m., he did not offer a plausible excuse for not making a space for the roll sometime between 11:00 a.m. and the time the truck arrived at 2:40 p.m. Given the lack of a valid excuse for the latter, it is held that Hammer was disobedient in failing to follow his foreman's work instruction to clear a space for the Midtec roll.

In so finding, the undersigned has considered the Union's contention that Hammer was given two inconsistent instructions by management for that day, namely assist a grinderman and make a space for the Midtec roll. In the Union's view, this placed the grievant in an impossible Catch-22 situation because he could not perform both duties at the same time. While the undersigned is mindful that such a situation could in fact occur, I am not persuaded that such was the situation here for the following reason. Contrary to the Union's assertion, Hammer was not assisting a grinderman that day; he

2/ Although the Union contends in their brief that Poss testified that it was an acceptable practice to place a roll on the washroom track, the notes of the undersigned from the hearing do not contain such testimony.

3/ Hammer's explanation though does not address why he failed to begin the unloading process in the remaining 20 minutes of his shift.

was instead assigned shipping and receiving clerk responsibilities for that shift. That being so, Hammer was not prevented from making a space for the Midtec roll sometime after 11:00 a.m. because he was assisting a grinderman.

Hammer's stated reason for not moving the Mead vacuum box on October 21 as directed was that he was helping another employe at the time, namely a grinderman. The record indicates that early that day Hammer was, in fact, assisting a grinderman. However, both the grievant's own time cards for the day and Johnson's testimony indicate that Hammer's work with the grinderman ended at 10:00 a.m. when the grinderman moved to another job that did not require Hammer's help. Thus, Hammer did not work with the grinderman after 10:00 a.m.; instead, he went on general shop cleanup. It was at that point in time (i.e. 10:00 a.m.) that Johnson told Hammer to move the box. In light of this sequence of events then, Hammer's excuse that he could not move the box because he was helping a grinderman simply is not supportable. Other than that, Hammer did not offer any reason why he could not have moved the Mead vacuum box any time between 10:00 and 10:30 a.m. when he was performing general shop cleanup. Therefore, given the lack of a valid excuse, it is held that Hammer was disobedient in failing to move the Mead vacuum box as directed.

In so finding, the undersigned has considered the Union's contention that Hammer was given three inconsistent instructions by management for that day, namely assist a grinderman, move the Mead vacuum box and remove bolts from an engraving roll. The Union argues these multiple assignments placed the grievant in an impossible situation because he could not do three different things at once. Contrary to the Union's assertion though, the Company did not direct the grievant to do all three jobs at once. Instead, it is evident from the record that these three different jobs were assigned in successive order. Specifically, Hammer worked with a grinderman from 8:00 to 10:00 a.m. After that job ended at 10:00 a.m. Johnson told Hammer to move the box. Finally, Johnson told Hammer to remove bolts from an engraving roll at 10:30 a.m. In the opinion of the undersigned, there is nothing inherently unreasonable about the pacing of these job assignments. While the Union correctly notes that it is possible to overload one person with multiple tasks so that he cannot complete all assigned jobs, I am not persuaded that such was the case herein.

The fourth and final incident differs from the others already discussed in one material respect, namely that Hammer does not offer any justifications for his actions on that date. Thus, Hammer admits that on October 24 he spent four hours washing a roll which was later rewashed, was out of his wash gear 15 minutes before the end of his shift, left the washroom a mess after getting out of his wash gear and spent 15 minutes filling out his daily time card. As is its right, management determined that this activity constituted unacceptable work conduct. It therefore follows that management had the inherent authority to discipline Hammer for such conduct. Having said that, what happened here was that management lumped Hammer's unacceptable work conduct of October 24 together with the other three incidents already discussed for purposes of imposing discipline. Specifically it included the October 24 incident as the fourth instance of Hammer's refusing to follow specific work orders. However, while the other three incidents have been found to involve failure to perform work assignments, such is not the case with Hammer's work conduct of October 24. Although Hammer's work conduct of October 24 can be characterized as violative of several major and minor company work rules, it is not accurate, as happened here, to characterize such conduct as refusing to perform work assignments. That being so, the October 24 incident is disallowed from further consideration herein.

It has been held then that the grievant was disobedient when he failed to perform work assignments without valid excuse on three occasions, namely October 14, 17 and 21. The Employer considered such conduct to violate major Work Rule #2. ("disobedience or gross insubordination"). 4/ This work rule was the subject of a previous arbitration award between the parties wherein the following definition of "disobedience" was set forth: "The act of disobedience must be flagrant and blatant ... and involve a refusal to obey a legitimate direct order or other legitimate, direct work instruction." In the opinion of the undersigned, the grievant's disobedience on October 14, 17 and 21 falls within this category because on those dates he knowingly failed to obey his foreman's legitimate direct work orders and offered no valid excuses for not complying with same. Hence, it follows that the grievant's disobedience on October 14, 17 and 21 violated major Work Rule #2.

In light of this conclusion that cause existed for disciplining the grievant for the above-noted misconduct, the question remains whether the punishment of discharge was proper. Arbitrators require that the penalty imposed be in keeping with the seriousness of the offense. The parties herein have contractually agreed that disobedience constitutes a major work rule violation and as such can result in serious disciplinary action including

4/ Although the Company also cited major Work Rule #10 ("restricting output"), that work rule has not been relied upon by the undersigned in reaching the decision herein.

discharge. In accordance therewith, I conclude that the penalty of discharge was warranted here given the fact that the grievant was disobedient on three separate occasions. In so finding, I have considered the grievant's length of service with the Company as a mitigating factor. This factor though has been substantially compromised by the grievant's work record. In this regard the record indicates that Hammer had been repeatedly counseled by Poss and other supervisors about his poor work performance, shirking job duties, and not completing job assignments. Thus, Hammer was put on notice to not engage in this type of behavior or he would face discharge. Finally, since the grievant had previously received a lengthy suspension for other misconduct and also received numerous written and oral warnings, progressive discipline had been

imposed by the Company. Therefore, it is held that the severity of discipline imposed here (i.e. discharge) was reasonably related to the seriousness of Hammer's proven misconduct.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

1. That the grievance is not barred based on the timeliness requirements in the contract;

2. That there was just cause for the termination of Vic Hammer. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 7th day of July, 1989.

By _____
Raleigh Jones, Arbitrator