

BEFORE THE ARBITRATOR

-----  
In the Matter of the Arbitration :  
of a Dispute Between :  
SUB-ZERO FREEZER COMPANY, INC. :  
and : Case 52  
: No. 41838  
: A-4410  
SHEET METAL WORKERS' INTERNATIONAL :  
ASSOCIATION, LOCAL NO. 565, AFL-CIO :  
-----

Appearances:

Paul Lund, Business Manager and Financial Secretary/Treasurer, for the Union.  
Donald D. Emerich, Personnel Director, for the Company.

ARBITRATION AWARD

Sheet Metal Workers' International Association, Local No. 565, AFL-CIO, herein the Union, and Sub-Zero Freezer Company, Inc., herein the Company, requested that the Wisconsin Employment Relations Commission designate Douglas V. Knudson as an arbitrator to hear and resolve a dispute. The undersigned was so designated. Hearing was held in Madison, Wisconsin on May 2, 1989. No transcript of the hearing was taken. The parties filed post-hearing briefs the last of which was received on June 5, 1989.

ISSUE:

The parties were unable to stipulate to the issue and agreed that the arbitrator should frame the issue. The undersigned frames the issue as follows:

Did the Company have just cause to suspend the Grievant, Duane Davidson, on January 27, 1989 for three days? If not, what remedy is appropriate?

BACKGROUND

On January 27, 1989 1/ Dennis Laumann, the Company's Vice President of Manufacturing, was making his daily tour of the plant. As he walked through the shipping dock area, he saw that a truck was being loaded with cartons containing refrigerator cabinets. The cartons were in rows of three across the width of the truck. Laumann noticed that one of the cartons already loaded on a truck for shipping had lost a metal band from the bottom of the shipping carton. The broken band was laying on the truck floor. The carton was in the middle of a row of three cartons. Another carton had been placed in front of the carton with the broken band. Laumann paged the shipping supervisor, Alan Markiewicz, to come to the shipping dock. Next, Laumann went over to Duane Davidson, who was operating a forklift and was about to put some more cartons containing refrigerator cabinets on the truck, and told Davidson to stop loading the cartons. Davidson asked Laumann why and what was wrong. Laumann just said to wait. Laumann asked Davidson who had loaded the carton in front of the carton with the broken band. Davidson said he had. When Markiewicz arrived at the shipping dock, he had Davidson remove the last row of cartons from the truck. Davidson then replaced the broken band on the carton.

At approximately 9:00 a.m. on January 27 Davidson was suspended without pay for three days, i.e., January 27, 30 and 31 for defective work and carelessness. The comments section of the suspension notice also contained the following statements by the Company: Told to operate forklift slower and safer; Leaving CAB with broken band in truck and loading CAB's in behind to hide; and, Not tipping CAB's back on fork lift as instructed. Davidson filed a grievance over his suspension on January 27.

Davidson has worked in the shipping department for about four years and has been a shipping clerk for about one year. He is aware that broken bands on cartons must be replaced and has done so on his own initiative when he has seen them. Otherwise the product could be damaged when the carton is moved. The forklift being used by Davidson had a lifting device which lifts the carton containing the refrigerator cabinet by slipping a plate beneath the banded top of the carton. Consequently, when lifted in such a manner, a cabinet could fall out of a carton if the bottom band is broken.

Relevant Contractual Provisions

ARTICLE XV

1/ Unless specified otherwise, all other dates herein refer to 1989.

## DISCIPLINE AND DISCHARGE

Section 1. Any employee may be suspended or discharged for just cause, provided, however, that if such employee feels he/she has been unjustly dealt with, they may file their complaint with a Shop Steward and it shall then be handled in accordance with provisions of Article XVII.

. . .

Any employee who works for six (6) months without committing another offense of that same nature shall have all references to disciplinary action expunged from the employee's personal record and thereafter return to Step 1 of the reprimand procedure as to the offenses of that nature: The aforementioned shall not apply to worker's compensation or unemployment compensation claims.

. . .

Dishonesty and defective workmanship shall be subject to disciplinary action up to and including a three (3) day suspension. Any further violations of the same nature shall subject the employee to immediate discharge.

### Position of the Union

The Company failed to present any evidence to show the grievant saw the broken band. Rather, the Company contends he should have seen it. It appears the Company merely was looking for an excuse to discipline the grievant.

While operating the forklift, an employee is unable to see anything directly in front of the forklift unless the employee stops the forklift, gets off and moves to a position where one can see in front of the forklift. The grievant has never been instructed to operate the forklift in such a manner. Further, there is no evidence to show that the grievant even loaded the carton with the broken band. Neither is there any evidence to contradict the grievant's testimony that he always has replaced broken bands when he noticed them.

There was no logical or legitimate reason for Laumann's failure either to call the grievant's attention to the broken band before more cartons were loaded or to answer his questions. Obviously, Laumann was attempting to entrap the grievant.

The Company tried to reinforce their case against the grievant by adding two more complaints to the discipline notice.

The discipline should be rescinded and all references to it should be expunged from his personnel records. Also, the grievant should be made whole for lost wages and/or benefits.

### Position of the Company

Laumann observed the broken band on a casual walk through the plant. Thus, the grievant should have had no problem seeing the band, even if he was operating a forklift. The grievant loaded the carton in front of the carton with the broken band.

As a shipping clerk, the grievant is responsible for insuring a truck is loaded carefully and should observe loading details, like watching for broken bands.

The grievant's testimony revealed numerous incidents of carelessness by the grievant and an admission that he had been told to slow down when operating the forklift. The grievant needed to be reminded in a forceful way that his careless job performance could not continue. There was just cause for the grievant's three day suspension.

### DISCUSSION

The undersigned recognizes that, while moving forward with a cabinet on the forklift, the operator's view of the area in front of the forklift is quite restricted. It also is clear that, as the shipping clerk, the grievant is responsible for seeing that the cartons containing the cabinets are properly loaded on trucks for shipment. The Company's contention, that the shipping clerk's responsibilities includes checking the cartons for broken bands, seems reasonable, since the shipping clerk is the last Company employee to see the product as it leaves the plant. Thus, while it may be difficult to check cartons, which have already been loaded on a semi-truck for shipment, for broken bands while operating a forklift, the grievant must work in such a manner that he can check for such details as broken bands, even if such entails getting off the forklift on occasion. That responsibility comes with the duties of shipping clerk.

Although the grievant may not have loaded the carton with the broken band, he still should be concerned with such details as checking for broken bands on all cartons which have been loaded, either by himself or a helper, on a semi-truck. Such a practice does not seem to be an overly cautious measure, in view of the potential for substantial damage to a unit which could result from a broken band. Rather, it would appear to be a sensible, as well as a relatively simple and quick, practice to check cartons for broken bands after the cartons have been loaded on a semi-truck.

Laumann's act of paging Markiewicz, before telling the grievant to stop loading cartons on the semi-truck, because he wanted the grievant's supervisor to be present before pursuing the matter, was warranted as a good management policy, rather than being a form of entrapment, as the Union asserts.

Markiewicz testified without contradiction that he had told the grievant on January 27 to slow down when operating the forklift, and, that, during the six month period preceding January 27, he had told the grievant both to slow down when operating the forklift and to tilt a unit when moving it, rather than carrying the unit upright. Accordingly, the addition of those comments to the suspension notice was not improper. However, those comments standing alone would not appear to justify a three day suspension, but rather, would seem to be appropriately handled under the contractual reprimand procedure for minor offenses. Nonetheless, under Article XV the Company has the discretion to issue either a three day suspension or a disciplinary action less severe than a three day suspension for defective workmanship. In determining the severity of the discipline to be given for the broken band, it was proper for the Company to consider the fact that the grievant had been told to slow down and to tilt the cartons. In view of those prior instructions, the Company reasonably concluded that the grievant needed to be reminded in a more forceful way than with a reprimand that careless workmanship would not be tolerated.

The undersigned is persuaded that the grievant's failure to see and replace the broken band constituted just cause for a three day suspension under the category of defective workmanship.

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

AWARD

That the Company did have just cause to suspend the grievant, Duane Davidson on January 27, 1989 for three days; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 16th day of August, 1989.

By \_\_\_\_\_  
Douglas V. Knudson, Arbitrator