

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ADVANCE DIE CASTING COMPANY

and

MACHINISTS DISTRICT 10

Case 1
No. 42376
A-4456

Appearances:

Mr. J. D. Thorne, Petrie, Stocking, Meixner and Zeisig, S.C., on behalf of the Company.

Mr. Kurt C. Kobelt, Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein the Company and the Union, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, I heard this matter on July 18, 1989 in Milwaukee, Wisconsin. The hearing was not transcribed and both parties filed briefs which were received by August 21, 1989.

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

ISSUE

The parties agreed to the following issue:

Did the Company have just cause to discharge grievant Tillman Edwards, and, if not, what is the appropriate remedy?

DISCUSSION

Edwards was employed by the Company for about 10 years as a trimmer, working on the 3:30 p.m. to 11:00 p.m. shift.

Prior to the start of his shift on May 19, 1989, 1/ Edwards, who has carpal tunnel syndrome, told Union representative Mark Jaeger, "I don't think I'm going to make it today. both of my hands are fucked up", and that he, Jaeger, should tell the front office about his problem.

1/ Unless otherwise noted, all dates refer to 1989.

Edwards, who wore a wrist brace and who was taking pain pills, was working under a doctor's restriction which allowed him to work with his left hand and assist with his right hand. On May 15 he complained to the Milwaukee Industrial Clinic about the pain in his right hand and asked for a restriction to eliminate any work with his right hand. The Clinic told him to contact his personal doctor and Edwards set up an appointment with him for May 22.

Edwards never told Company representatives at the start of his May 19 shift that his hands were hurting, even though he briefly spoke to Machine Supervisor Edwin Frost and Industrial Relations Director Bruce Drigget about other matters.

Edwards that day was assigned to mark and check parts for flash. He testified that the parts were not ready, a point disputed by Frost who testified that the correct parts were by Edwards' machine. Edwards claimed that he needed another bucket of parts and that the fork lift driver was too busy at the start of the shift to get him another bucket, and that since he was told not to use the paging system, he decided to go to the bathroom at about 3:40 p.m., where

he soaked his hands in hot water and paper towels and used the facilities. Edwards was in the bathroom for at least 27 minutes and never told anyone from management ahead of time that he was going to the bathroom to soak his hands.

In the meantime, Drigget, Frost and Company Controller Bob Smits became concerned over Edwards' absence from the shop floor and learned that he was in the bathroom. They remained outside the bathroom until Edwards came out, with none of them ever entering the bathroom to check on Edwards or to ask why he was spending so much time there.

Upon finally emerging, Frost told Edwards that he was going to receive an oral warning for abuse of Company time. Edwards replied, "What the fuck are you talking about" and "Bite me"; that he had to take a shit and that he could not control his bodily functions; that no one could tell him when or how to do so; that if he had to prove what he did, he would have a plumber from Roto-Rooter suck the shit out of him so that he could throw it at Drigget or Frost; that Frost "had better get off his Goddamn back"; and that he was being set up. At no time did Edwards ever claim that he had used hot compresses for his wrists.

After Frost told him to return to work, Edwards said, "Goddamn it, Ed. You know that I have carpal tunnel syndrome" and explained that he had reinjured his hand on the job the night before and that he could not work under the restriction imposed by the Milwaukee Industrial Clinic. Frost said that his injury had not been reported the day before as required under Company policy, and asked Edwards when he had hurt his hand. Edwards replied, "Do you want to know what time I last took a shit? I had a hard-on last night at 11:00 p.m. Do you want to know about that, too?"

Edwards repeated that he was unable to work and demanded that the Company order a cab to take him to his doctor. Frost refused, saying cabs were ordered only for original injuries and that Edwards would have to get his own cab.

Edwards at some point pointed his finger at Drigget and said, "You're beginning to piss me off." Union representative Jaeger approached the scene and spoke to Edwards. Jaeger testified that he asked Company officials to let him speak to Edwards alone for a few minutes, but that they refused. Edwards finally said, "I was never here. I was never punched in. I'm going home." Drigget admitted that Edwards asked for permission to leave and that he gave it.

On the way to the time clock, Edwards told Drigget, "Do you want to watch me jack off, too?" When Drigget answered no, Edwards said he didn't have to "jack off", but that Drigget did. Edwards pointed his finger at Drigget and said, "Boy, you are getting on my nerves." After punching out, he said: "This fucking place is like a fucking prison. Where are the shotguns? You guys are acting like the damned Gestapo, acting like prison guards."

The Company placed Edwards on indefinite suspension on May 22 and discharged him on May 26 for insubordination and abusive language. Edwards had surgery on his right wrist on June 1 and filed a grievance over his discharge on June 7.

In support of the grievance, the Union argues that the Company lacked just cause to fire Edwards because he in fact was not insubordinate on May 19; because the Company improperly considered Edwards' past work record in discharging him; and because discharge was too severe a penalty. The Company, in turn, claims that it had just cause to fire Edwards because of his May 19 behavior, particularly since he earlier had been insubordinate in August, 1988.

The resolution of this issue starts with the Company's work rules which provide that certain major offenses are subject to immediate discharge. Rule 9 thus provides:

"Gross insubordination or threats; Deliberate refusal to carry out instructions of management, foremen, or other designated supervisors, or threatening, harassing or abusing a Supervisor or fellow employe."

Here, the Union correctly points out, contrary to the Company's assertions, that Edwards never threatened anyone on May 19 since mere finger

pointing, and "generalized expressions of anger and threats to file lawsuits, cannot be realistically construed as a meaningful threat justifying discharge."

In addition, he never refused to comply with any express management directives since the Company accepted his claim that he could not Work on May 19 because his hands hurt too much. Furthermore, he asked for permission to leave that day and Drigget gave it to him. He thus could not be disciplined over punching out early. In addition, Frost withdrew the oral warning he gave to Edwards for staying in the bathroom too long.

The Company's discharge decision thus stands or falls on whether Edwards harassed or abused Company representatives on May 19.

As to that, the Union acknowledges that Edwards always has had a boisterous personality, but that the Company for ten (10) years has tolerated Edwards' behavior and that Edwards' May 19 "colorful, albeit profane outburst was made under duress" and was precipitated by some of the Company's own actions.

To be sure, the record shows that Company officials did give Edwards enough rope to hang himself since they never went into the bathroom to get him, and left him in there for at least 27 minutes. In addition, they apparently refused to let Union official Jaeger talk to Edwards alone when Jaeger tried to cool things down. Given Edwards' propensity for blowing up, company officials must have known that he would only make matters worse for himself, which he did, in spades.

But having said that, it is also true that Company officials were not required to enter the bathroom to retrieve Edwards. Furthermore, since Edwards never told Company representatives on May 19 that he was in the bathroom soaking his hands, he alone is responsible for leading them to believe that he was malingering. Furthermore, the fact remains that Company officials were very professional in the way they dealt with Edwards and the extraordinary personal abuse which he heaped upon them.

It is the intensity and length of this attack --- which lasted 10-15 minutes --- which distinguishes this situation from the other arbitration cases cited by the Union where arbitrators have reinstated employes who used profanity. For here we are dealing with more than mere shop talk and foul language; we are dealing with language and conduct which was personally directed to Company representatives, which demeaned them in front of others, and which directly challenged their right and ability to run the plant. He thus repeatedly abused and harassed them when they raised legitimate questions about his work activities, thereby violating Rule 9.

If this were a first-time offense, it might be possible to make allowances for the fact that Edwards suffered an on-the-job injury and that his May 19 outburst was triggered by what he viewed as unfair Company treatment.

But it is not. Edwards also was insubordinate on August 28, 1988. While his

accompanying three (3) day suspension was later lifted as a result of a settlement, the Company on February 17, 1989, as part of that settlement stated:

"(2) The grievance written 9/13/88 concerns a Written Warning for Insubordination, resulting in a three (3) day suspension. This is a Major Work Rule violation.

Company final offer: The Written Warning remains as issued. This violation is not part of the progressive discipline procedure, therefore it remains in the record on its own merits and is not reduced after one (1) year. Further violations determined to be insubordinate will be addressed in a similar manner.

However, the Company offers to pay three (3) days of wages to Mr. Edwards for the suspension."

By virtue of that, Edwards knew that one more act of insubordination could lead to his immediate discharge. His subsequent may 19 misconduct is thus part of a larger problem, one which shows no sign of abating.

In this connection, the Union nevertheless argues that the Company improperly considered Edwards' past work record, claiming that the Company has a separate point system for absenteeism and leaving early and that discharge is too extreme a penalty. But even if the Company were precluded from looking at Edwards' absentee record, it was not precluded from relying on the fact that Edwards in the past was guilty of insubordination. Given this prior insubordination, and that fact that Edwards' May 19 misconduct was so egregious, it must be concluded that the Company had just cause to fire him. 2/

2/ The Union's reliance on the Delia Ligon incident for the proposition that discharge is too severe a penalty here is misplaced. For while it is true that Ligon only received a written warning for her insubordination in telling Drigget that he was a "fucking liar", her situation is different from Edwards' since, unlike here, that was her first act of insubordination and it was not nearly as prolonged or as serious as the one herein. Drigget was correct when he testified at the hearing that, "We did not want this --- (Edwards confrontation) --- to be a new benchmark."

In light of the foregoing, it is my

AWARD

That the Company had just cause to discharge grievant Tillman Edwards; his grievance is therefore denied.

Dated at Madison, Wisconsin this 25th day of October, 1989.

Amedeo Greco /s/
Amedeo Greco, Arbitrator