

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 BAKERY, CONFECTIONERY and TOBACCO :
 WORKERS' UNION, LOCAL 22, AFL-CIO :
 :
 and : Case 3
 : No. 42833
 : A-4505
 SUPER TOWN FOODS, INC. :
 :

Appearances:

Mr. Richard Kondratowicz, President, appearing on behalf of the Union.
Mr. Phillip J. Baker, Manager, appearing on behalf of the Company.

ARBITRATION AWARD

Pursuant to a request by Bakery, Confectionery and Tobacco Workers' Union, Local 22, AFL-CIO, herein the Union, and the subsequent concurrence by Super Town Foods, Inc., herein the Company, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission on October 5, 1989, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on December 7, 1989 at Superior, Wisconsin. The hearing was not transcribed. The parties did not file briefs.

After considering the entire record, I issue the following decision and Award.

ISSUE:

The parties stipulated to the following issues:

1. Is the grievance timely filed?
2. If so, was the grievant discharged for just cause under the terms of the collective bargaining agreement?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE IV

DISCHARGE

Section 3: The Employer shall not discharge any member holding seniority rights without just cause. A member discharged shall be informed in writing of the reason therefor, at the time of his discharge, and a copy thereof shall be sent to the Union. Any objection to any discharge must be made in writing within ten (10) days of the discharge. A member whose discharge is later found unjustified shall be reinstated and paid for all time lost; provided, however, that the claim for unjustified discharge has been made within the ten (10) day period.

ARTICLE XII

GRIEVANCE AND ARBITRATION PROCEDURE

Section 3: All grievances must be submitted in writing within thirty (30) calendar days of their occurrence to receive consideration, or they are barred.

DISCUSSION:

The Company initially raises a procedural objection that the grievance was not timely filed, citing Article IV, Section 3 in support thereof. Said contract provision provides that any objection to any discharge must be made in writing within ten (10) days of discharge. However, this section does not specifically require that the written objection be filed with the Company within ten (10) days as argued by the Company. All that it requires is that the grievance be reduced to writing within ten (10) days. It is undisputed that the grievant, Donovan Gustafson, filed a written grievance with the Union on July 7, 1989, seven (7) days after his termination on June 30, 1989. Therefore, based on the foregoing, the Arbitrator finds that the grievant complied with the ten (10) day filing period requirement found in

Article IV, Section 3.

While the Company offered no persuasive evidence that the ten (10) day filing period has been interpreted in the past in the manner advocated by the Company, the Union indicated, unrefuted by the Company, that a thirty (30) day time period was put into the contract to give the parties sufficient time to process grievances, taking into consideration the long distance between the Company's office in Superior, Wisconsin, and the Union's office in Minneapolis, Minnesota. It is undisputed that the Union submitted Gustafson's grievance to the Company by letter dated July 12, 1989--well within the thirty (30) day filing period referred to in Article XII, Section 3. Therefore, based on all of the above and in order to harmonize the provisions of Article IV, Section 3 and Article XII, Section 3, the Arbitrator rejects the aforesaid procedural objection by the Company.

An issue remains as to whether the grievant was discharged for just cause under the terms of the parties' agreement.

It is undisputed that the grievant used words like "fuck off" to his supervisor during discussion about time off over the 4th of July. The record is also clear that the grievant repeated his use of swear words in an abusive manner, even after being asked for an apology by said supervisor. There is nothing in the grievant's employment record which would mitigate the penalty imposed by the Company in the instant case. Nor do the circumstances justify his behavior. In this regard, the Arbitrator notes that although the grievant may have been justified in his frustration over employees with less seniority getting more time off, he expressed his dissatisfaction in an improper way. In addition, the record indicates that the Company assigned the grievant to work on the dates in question because he was the only qualified employee available to do the work in dispute. Finally, the record indicates that the Company has bent over backwards in an effort to schedule work, taking into consideration employees' wishes. Nowhere herein does the Union claim that the Company violated the agreement when it established the work schedule complained of by the grievant.

In view of the foregoing, the Arbitrator concludes that the answer to the second issue, as stipulated to by the parties, is YES, the grievant was discharged for just cause under the terms of the agreement.

Based on all of the above, and the record as a whole, it is my

AWARD

That the grievance of Donovan Gustafson is hereby denied and this matter is dismissed.

Dated at Madison, Wisconsin this 11th day of January, 1990.

By _____
Dennis P. McGilligan, Arbitrator