

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 SUB-ZERO FREEZER COMPANY, INC. :
 :
 and : Case 55
 : No. 42533
 : A-4472
 SHEET METAL WORKERS' INTERNATIONAL :
 ASSOCIATION, LOCAL UNION :
 LOCAL NO. 565, AFL-CIO :
 :

Appearances:

Mr. Donald D. Emmerich, Personnel Director, on behalf of the Company.
Mr. Paul F. Lund, Business Manager/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 September 6, 1989 in Madison, Wisconsin. The hearing was not transcribed and the record was closed by October 24, 1989.

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

ISSUES:

Since the parties were unable to frame the issue, I have framed it as follows:

Did the Company have just cause under Article XV, Section 1, of the contract to discharge grievant Duane Davidson and, if not, what is the appropriate remedy?

DISCUSSION:

The Company discharged Shipping Clerk Davidson, who had been employed since 1979, on June 13, 1989 1/ for "defective work" and "carelessness" when he allegedly broke the transmission gears in a forklift he operated.

The Company asserts that Davidson negligently operated the forklift by refusing to come to a complete stop before shifting gears and changing directions; that he inflicted so much damage that the entire forklift had to be junked; that General Foreman Don Buroker, Shipping/Receiving Supervisor Allen Markiewicz, and Maintenance Supervisor Gregory Schmitt at various times had warned Davidson over coming to a complete stop and that he ignored their admonitions; that the transmission was in good condition; and that only Davidson could have broken it since he drove it about 90-95 percent of the time.

The Union, on the other hand, claims that other employes routinely drive their forklifts in the same way as Davidson; that other employes also regularly drove the damaged forklift in question and that it is mere "speculation" as to whether Davidson was the person who broke it; that Davidson on about 6-12 occasions had complained that the forklift brakes did not work and that he had difficulty in getting it to come to a complete stop; and that he had been told

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

about a month before that his forklift would be replaced at the June 24 plant shutdown and that he should "run it until it blows up." The Union therefore urges that Davidson be reinstated and made whole. 2/

The resolution of this issue turns upon several major factors:

One involves whether Davidson was ever warned by management to come to a complete stop before shifting the transmission on the forklift when he changed directions. While Davidson asserts to the contrary, I credit the combined testimony of Buroker, Markiewicz and Schmitt that they frequently warned him about this problem. Hence, Davidson repeatedly was put on express notice not to do what he did.

Secondly, I also credit their testimony that Davidson had almost exclusive use of the forklift and that other employes only used it very infrequently, thereby making it unlikely that they were the ones who broke it.

Thirdly, the transmission should have been in good condition since it was totally overhauled in May, 1988 by Wisconsin Lift Corporation. That being so, it would appear unlikely that it could have broken the way it did had it been operated properly.

In addition, Davidson on January 27 received a three (3) day suspension for defective work and carelessness, i.e., loading a refrigerator carton which had a broken band around it on a truck, thereby leading to possible damage of the product when it was unloaded. Arbitrator Douglas V. Knudson, on August 16, 1989, sustained said suspension noting, inter alia, that Davidson had been previously warned on numerous occasions "to slow down when operating the forklift"

The Union complains over the introduction of said arbitration decision because, in its words, "the Company has tried to convince this arbitrator that Davidson is a careless and irresponsible individual . . ." and that, in fact, his failure to spot a broken band on a carton in a truck he was loading has nothing to do with the breakdown of the transmission in issue.

In and of itself that may be true. But this prior incident can be used to show a pattern of carelessness which, in turn, can shed light on whether Davidson generally operated his forklift in a careless fashion.

As to that, the record also shows that a basiloid lift was broken on June 8 when Davidson was operating a forklift different from the one involved on June 13. Again, Davidson claims that he was not responsible for that damage and that it simply broke off by itself. Maintenance Supervisor Schmitt, on the other hand, testified, "There was no way those bolts dropped off--they were sheared off." He is correct since the totality of the record shows that the lift was snapped off; that its bolts were sheared; and that they could only have been broken in that fashion because Davidson failed to raise the basiloid high enough to clear the dock plate. Davidson was never disciplined over this incident, but he was warned that day that said action could be the basis for disciplinary action, which in the next step of the disciplinary chain was discharge. The Company acknowledges that this incident played no role in its discharge decision, and the Union therefore urges that it should be disregarded.

The Union's objection is well taken regarding the propriety and/or severity of the June 13 discharge decision. However, this prior incident, like the one in January, can be used to show a pattern of carelessness.

The one factor in Davidson's favor is the fact that the forklift brakes were occasionally faulty and that he sometimes had difficulty in bringing the forklift to a complete stop. The question then becomes whether this happened frequently enough to cause the broken transmission. Because Davidson testified that he only complained about the brakes "once or twice" since January 1, 1989, it is unlikely that this problem, and only this problem, led to the broken transmission.

The ultimate question here therefore boils down to one involving causation, i.e., given the fact that Davidson regularly refused to come to a complete stop before changing directions, that he had almost exclusive use of the forklift, that the transmission had been overhauled in May 1988 and that it should not have broken down in normal operations, and that he generally was careless in the way he operated it, does the record establish that all this caused, or at least helped cause, the transmission gears to break as the Company asserts.

2/ The Union's October 24, 1989 letter to the arbitrator rightly objects to certain assertions in the Company's brief regarding statements attributed to representatives from Wisconsin Lift Corporation. Since there is no record support for same, they have been disregarded in the consideration of this matter.

Given the fact that the naked eye cannot see how a transmission is functioning and that it, instead, can only be examined when it is stripped down, there is no way of knowing the exact nature of the damage Davidson inflicted on the transmission whenever he changed gears without coming to a complete stop. But since he did it so often, and since the resulting damage could only have been cumulative, it can only be concluded that said faulty driving led, in whole or in part, to the transmission's ultimate destruction. 3/ Hence, the Company had just cause to discharge him.

In light of the above, it is my

AWARD

That the Company had just cause to discharge grievant Duane Davidson; the grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 18th day of January, 1990.

By _____
Amedeo Greco, Arbitrator

3/ Since the broken transmission could only have resulted from Davidson's faulty driving, there is no merit to the Union's complaint that the Company did not properly investigate this situation before it discharged him on June 13, 1989.