

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SUB-ZERO FREEZER COMPANY, INC.

and

LOCAL UNION 565, SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION, AFL-CIO

Case 56
No. 43049
A-4539

Appearances:

Mr. Paul Lund, Business Manager and Financial Secretary Treasurer, for the Union.

Mr. Donald D. Emerich, Personnel Director, for the Company.

ARBITRATION AWARD

Pursuant to the terms of the parties' 1988-1990 bargaining agreement, the undersigned was designated by the Wisconsin Employment Relations Commission as arbitrator to resolve a grievance. Hearing was held in Madison, Wisconsin on November 16, 1989. A transcript of the hearing was taken and the parties submitted written argument, the last of which was received on December 15, 1989.

STIPULATED ISSUE:

Did the Company have just cause to terminate grievant Phil Buckner on October 5, 1989 and, if not, what is the appropriate remedy?

CONTRACT PROVISIONS:

ARTICLE XIV

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 be handled in accordance with provisions of Article XVII. If it is found that such employee has been unjustly discharged or suspended, then he/she shall be restored to employment with full seniority rights and paid for all time lost at the usual rate of compensation, unless in arbitration a

discharge is converted to a suspension, provided the complaint is registered with the Employer within seventy-two (72) hours of the suspension or discharge.

Section 2.

. . .

Misconduct under the following subject areas shall be subject to immediate discharge or the by-passing of any of the following immediate disciplinary steps; insubordination, stealing, fighting, possession or sale of drugs on Company premises and being intoxicated on Company premises.

DISCUSSION:

The Company discharged the grievant on October 5, 1989 for conduct which the Company identified as "gross insubordination" on the grievant's disciplinary notice. The conduct in question occurred during two confrontations on October 5, 1989 between the grievant and supervisor Cunningham.

For several days prior to the two confrontations, Cunningham had been asking the grievant, a material handler, to move several boxes of parts. The grievant had moved some but not all of the boxes prior to October 5. On October 5, Cunningham asked the grievant to remove the remaining boxes. The grievant responded by telling Cunningham that he was busy and would move the boxes when he had a chance. From this point, the discussion quickly escalated into a shouting match. Cunningham reminded the grievant that he had been asking him to move the boxes for several days and told the grievant he wanted the boxes moved soon. The grievant repeated that he was busy and would move the boxes when he had time.

It is clear that during this confrontation, the grievant was challenging the supervisor's authority. However, I am not persuaded the grievant refused to obey a direct order. The grievant was not refusing to move the boxes and had not been ordered to move them immediately. Cunningham could legitimately have brought the matter to a conclusion by ordering the grievant to move the boxes immediately. Had the grievant disobeyed such a direct order, he clearly would have been guilty of insubordination. However, Cunningham, to his credit, chose to end the confrontation by telling the grievant that if he (the grievant) wasn't going to move the boxes, Cunningham would get another material handler to do the work. Cunningham and the grievant then went their separate ways.

A minute or two later, the grievant initiated a second confrontation when he stopped his forklift, approached Cunningham, and loudly told Cunningham never to shout at him again. 1/ The Company

1/ The Company also contends that the grievant told Cunningham never to tell him what to do again. The grievant denies making this statement during either confrontation and other witnesses do not recall this particular remark being made. In my view, I need not resolve this dispute. If the grievant made this remark, the level of his misconduct would still warrant discharge. If the grievant did not make this remark, his misconduct would still warrant the suspension I have imposed.

contends that the grievant also invited Cunningham to step outside to settle their dispute. The grievant denies making this statement and contends that he only invited Cunningham to go see the grievant's direct supervisor to settle the dispute. Given the grievant's combative attitude, it would clearly be reasonable for Cunningham to have interpreted the grievant's remarks as a suggestion that a fight between the two of them could settle the matter. However, all parties agree that the grievant ended his tirade against Cunningham with the suggestion that they discuss the problem with the grievant's direct supervisor. Such a rational suggestion is inconsistent with a conclusion that the grievant extended an irrational fight invitation seconds earlier. In addition, Cunningham's initial testimony at transcript page 14, lines 12-18, is consistent with the conclusion that the grievant's invitation to "settle the matter" was limited to talking about the problem with the grievant's direct supervisor. Thus, I conclude that the grievant did not invite Cunningham to resolve their dispute through a fight.

Does the grievant's conduct during these two confrontations establish just cause for his discharge? I conclude it does not. The confrontations did not involve threats, profanity, or physical contact. Due to Cunningham's restraint, the confrontations did not produce the refusal of a direct order. However, while not sufficient to warrant discharge, the grievant's display of disrespect for a supervisor provides cause for a lengthy suspension. While I am aware of the extraordinary length of the suspension which I have imposed, I find it unacceptable to grant any backpay to an employe who, but for the admirable restraint of Cunningham during both confrontations, would likely have provided the Company with a level of insubordination sufficient to warrant discharge.

Given the foregoing, it is my

AWARD

The Company did not have just cause to terminate the grievant, Phil Buckner, on October 5, 1989. The Company shall immediately reinstate the grievant without backpay but without loss of seniority.

Dated at Madison, Wisconsin this 15th day of February, 1990.

By /s/ Peter G. Davis
Peter G. Davis, Arbitrator