BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS LOCAL UNION NO. 43	Case 3 No. 43005
and	A-4535
J.W. PETERS & SONS, INC.	

Appearances:
Mr. George T. Mueller, Secretary-Treasurer, Teamsters Local Union No. 43, appearing on behalf of the Union.
Mr. Richard Lewis, Human Resource Manager, J.W. Peters & Sons, Inc., appearing on behalf of the Company.

ARBITRATION AWARD

The Union and the Company named above are parties to a collective bargaining agreement which provides for final and binding arbitration of certain disputes. The Union made a request, with the concurrence of the Company, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of George Galvan. The undersigned was appointed and held a hearing on January 12, 1990, in Burlington, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript, of the hearing was made and the parties waived post-hearing briefs as well as the provision of Article 10, Section 8, which requires an arbitrator to render a decision within 30 days of the closing of the hearing.

ISSUE:

The parties agreed to the following issue:

> Did the Company have just cause to discharge the Grievant, George Galvan? If not, what is the appropriate remedy?

CONTRACT PROVISION:

ARTICLE 34
DISCHARGE OR SUSPENSION

> The employer may not discharge or suspend any employee who has completed the probationary period, without just cause. For offenses other than those listed below there will be a progressive disciplinary procedure of two written warning notices, a copy shall be given to the employee and the steward. A third offense within a 12 month period may result in discharge or suspension. Warning notices need not be for related offenses.
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> In cases of absenteeism or tardiness there shall be a conference with the employee and the steward or his designated representative. If the employee continues to have a problem, a warning notice will be issued.

BACKGROUND:

The Grievant, George Galvan, was a general laborer at the Company from March 28, 1988, until his discharge on April 17, 1989. The Grievant's duties included setting up and taking down forms, making finished concrete, general lifting work, driving various vehicles, and working outside in the yard in all types of weather.

The Grievant was discharged due to his absence and tardiness record. During his 12 and a half months of employment with the Company, the Grievant was absent 45 full days, three partial days, and was tardy four days. Of the 45 full days the Grievant was absent, two were for personal leave, one was for a birthday, one was for a transportation problem (his tires were slashed), 13 were for accidents occurring out of the plant, and 28 were for sickness or medical appointments.

The Grievant received eight consultations from his supervisors from April 25, 1988, to February 23, 1989. He received two written warnings regarding his absenteeism on August 10 and November 3, 1988. Despite the second written warning in November, the Grievant's supervisor, Dennis Schroeder, noted in a following consultation on December 1, 1988, that the Grievant was a good worker and would be given one final opportunity. Two more consultations followed in February of 1989 before he was discharged in April of 1989.

During the summer of 1988, the Grievant was absent several times for problems with kidney stones and eventually had surgery on July 1, 1988 for that problem. The Grievant was involved in a car accident on October 22, 1988, and an accident at home lifting weights on March 22, 1989. Other absences were due to a variety of problems, such as influenza, tendonitis, and dental problems. The Grievant was absent during each month of his employment except for the first month when he was still on probation. The Grievant provided the Company with medical excuses or documentation, except for his two absences in April of 1989, because the local medical clinic notified him the previous month that it would no longer care for him due to a delinquent bill.

THE PARTIES' POSITIONS:

The Company submits that due to the Grievant's extensive absenteeism record during his relatively short tenure, it had just cause to discharge him. The Company states that the Grievant came to it seeking full-time employment, but ended up being a part-time employee month after month. The Company went beyond its contractual requirements in terms of consultations, in a good faith effort to get the Grievant to straighten out his record. However, the Grievant's record did not improve. The Company could have discharged the Grievant at an earlier time than it did. No employer or industry can accept this kind of absenteeism, which went far beyond what should be expected. Therefore, the Company asserts that the termination of the Grievant was justified and requests that it stand.

The Union asserts that there is no just cause for the termination. The time that the Grievant lost was verified by physicians. The Grievant was granted two days off as personal days, and out of the other days, a few of the absences were job related. The Union notes that the work performed by the Grievant is hard, heavy work, unlike production maintenance work performed inside. The Grievant was also mandated to work overtime on Saturdays, which allowed little time for him to recover from illnesses. The Grievant was not accustomed to this type of work, and his only problem was absenteeism. The Grievant is employable, as shown by the fact that he quickly got another job. The Union urges the Arbitrator to consider the entire record, including the type of work involved, the illnesses which were beyond the Grievant's control, and the good work record of the Grievant.

DISCUSSION:

While the Union introduced evidence that the Grievant had no health problems on his previous job or in the job he took after his discharge, the Arbitrator must confine her decision to the Grievant's record with this Company in determining whether this Company had just cause to discharge him.

When the Grievant was on the job, he was a good worker. His supervisor called him a good worker and wanted to give him another chance to stay on the job. The Grievant had no complaints about his work, and he was a working foreman on a couple of occasions, including shortly before he was discharged.

A review of the Grievant's absenteeism record shows no particular pattern, such as absences surrounding weekends or holidays. It may be that the Grievant suffered an unfortunate run of bad luck during 1988 and early 1989. He had kidney stones and surgery, a car accident, a dental problem, and strained himself lifting weights at home. Although the Grievant worked outside in the yard in inclement weather, there is no evidence that his absences resulted from such a type of work. The excessive absenteeism, if not the Grievant's fault, was also not the Company's fault.

The Company complied fully with its contractual obligations by consulting

with the Grievant and giving him two written warnings, in conformance with Article 34. Even after the second written warning on November 3, 1988, the Company continued to give the Grievant the benefit of the doubt. However, despite the second warning, the Grievant was absent 15 full days, two partial days, and received three further consultations.

I find that the Company had just cause to discharge the Grievant based on the excessive absenteeism record. Even if one removes the two personal days and one birthday from the absences, there are still 41 days that the Grievant was absent, as well as three partial days. Such a record is clearly excessive and not likely to be tolerated by any employer. While a number of the absences in June and July of 1988 were from one incident -- the kidney stones -- the absences continued on throughout the Grievant's employment. The Grievant appears to have had a number of unfortunate circumstances, but the Company was lenient and tolerant with him, as shown by the number of consultations. After five consultations and two written warnings, the Grievant missed 15 full days, two partial days and was tardy twice. The Company had not seen any evidence of improvement in the Grievant's absenteeism record.

An employer has the right to expect an employee to come to work with reasonable regularity. Arbitrators generally recognize an employer's right to terminate employees for excessive absences even due to illnesses. In this case, the Company could expect only that the Grievant would be a part-time employee, due to his continuing record of absenteeism. The Grievant had been employed just a little over a year at the time of his termination. The Company had no track record with this Grievant except for a record of absenteeism. The Company's attempt at progressive disciplinary measures had failed, and its choice to discharge the Grievant, under these circumstances, was a reasonable one.

Accordingly, the Arbitrator finds that the Company had just cause to discharge the Grievant.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 20th day of February, 1990.

By _____
Karen J. Mawhinney, Arbitrator