

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
 :
LOCAL UNION #2832, MIDWESTERN :
INDUSTRIAL COUNCIL, UNITED :
BROTHERHOOD OF CARPENTERS AND : Case 27
JOINERS OF AMERICA : No. 42739
 : A-4495
and :
 :
EGGERS INDUSTRIES, INC. :
 :

Appearances:

Mr. Conrad Vogel, Assistant Business Representative, Midwestern Industrial Council, United Brotherhood of Carpenters and Joiners of America, 1614 Washington Street, Two Rivers, Wisconsin 54241-3099, appearing on behalf of Local Union #2832.
Mr. Gary Milske, Personnel Manager, Eggers Industries, Inc., Neenah Division, 164 North Lake Street, Neenah, Wisconsin 54956, appearing on behalf of Eggers Industries, Inc.

ARBITRATION AWARD

Local Union #2832, Midwestern Industrial Council, United Brotherhood of Carpenters and Joiners of America (hereinafter Union) and Eggers Industries, Inc. (hereinafter Employer or Company) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved disputes involving the interpretation or application of any provision of said agreement by an Arbitrator appointed by the Wisconsin Employment Relations Commission. On August 28, 1989, the Union and Employer jointly requested the Commission to initiate grievance arbitration in this matter. On September 27, 1989, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this dispute. A hearing was held on October 23, 1989, in Neenah, Wisconsin, at which time the Union and the Employer were afforded the opportunity to present evidence and to make arguments as they wished. No transcript was made of the hearing. The Union and the Employer exchanged briefs on November 29, 1989, and waived the filing of reply briefs. Full consideration has been given to the evidence and arguments of the Union and the Employer in reaching this decision.

STATEMENT OF FACTS

The basic facts are not in dispute. Daniel Eake (hereinafter Grievant) has worked at Eggers Industries, Inc., for over ten years. On February 1, 1988, the Grievant successfully bid for the position of Utility Operator I in the Fire Door Department, at which time he was placed on a six month probation period. During this period the Department Manager counseled the Grievant at least three times regarding production, initiative, attitude and talking. At the end of the six month probation period, the Department Manager determined that the Grievant was not performing satisfactorily. The Department Manager extended the probation period one month and he advised the Grievant that the Grievant's performance would have to improve. At the end of the seventh month the Department Manager determined that the Grievant's performance was below average. The Department Manager ended the probation period and transferred the Grievant to another position.

The Grievant filed a grievance, alleging he was unjustly and unfairly denied a position and requesting to be made whole. Said grievance was properly processed through the contractual procedure, and is properly before this arbitrator.

PERTINENT CONTRACT LANGUAGE

ARTICLE TWO - MANAGEMENT CLAUSE

2.1 The management of the plant and direction of the working forces, including the right to hire, suspend or discharge for just cause; to assign jobs, to promote and/or transfer employees within the plant, to establish standards, to determine products to be handled, fabricated or manufactured, the schedules of production and the methods, processes and means of production or handling are vested exclusively in the

Company.

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SCHEDULE "A"
RATE PROGRESSION SCHEDULE

1. FOR OTHER THAN TEMPORARY TRANSFERS
Starting rate of pay for general labor and skilled job classifications and the rate progression up to the maximum rate based on specific time intervals are outlined in the attached schedules.
2. Employees will be considered as serving a probationary period after transferring to a higher general labor or skilled job classification until they receive the maximum rate of pay for the new job, as outlined in the attached schedules.
3. Any employee may progress to the maximum rate of pay for a particular job classification in advance of the time intervals indicated on the Schedule at management's discretion only. An additional thirty (30) day extension of probation may be granted at Company's discretion.

STATEMENT OF THE ISSUE

The Union and the Company stipulated to framing the issue as follows:

Was Daniel Eake able to perform the work of Utility I
Firedoor?

If so, what is the remedy?

POSITIONS OF THE PARTIES

1. Union

The Union argues that the Grievant knew the job of Utility Operator I, except for one machine he had worked on for only two days; that the Grievant was talked to several times during his probationary period; that the Grievant, having never heard any complaints from his fellow workers, thought his performance was acceptable; that the Grievant felt he was not doing anything different from his fellow employees; that the Grievant was not told that if his performance did not improve, then he would be taken off the job; that the Grievant's fellow workers stated that he was able to learn easily and was a good worker; that these fellow employees testified that the Grievant did not talk more than anyone else; that the Grievant is a better worker in all aspects than the present Utility Operator I; and that the present Utility Operator I served a 13 month probationary period as opposed to the Grievant having served a seven month probationary period.

The Union contends that the Department Manager did not follow the guidelines for filling out the Job Training Progress Reports; that the reports were not filled out each day; that the Department Manager did not understand nor follow the guidelines printed on the back of the report; that in properly evaluating an employee, it is crucial that the proper methods be used; that in the evaluation process, the Department Manager was aided by an employee who was not on the factory floor most of the time; and that the efficiency sheets which show actual employee performance on each job were not secured when this grievance was filed.

Finally, the Union argues that for the job bidding procedure to have any meaning at all, the proper procedure must be followed; that this is not a borderline case, as the Company states; that the evidence is clear that the Grievant was qualified for the Utility Operator I position; that if the Company understood and used the proper evaluation process, it would have come to the conclusion that the Grievant is a good worker who learns easily and is better at the job than the present Utility Operator I.

Therefore, the Union submits that, based on the evidence in this case, the grievance must be sustained and an appropriate remedy be issued, including a provision that the Grievant be made whole for all losses he suffered as a result of the Company's action.

2. Company

The Company asserts that it has an established probationary program which it has followed for many years; that to aid its department managers in determining whether an employe should pass probation, the Company provides the department managers with job training progress sheets on which to record the employe's progress; and that this program is designed so that department managers' probationary decisions are not unreasonable, arbitrary, capricious or discriminatory.

The Company argues that the Grievant's Department Manager documented the Grievant's performance on a daily basis; that the Department Manager counseled the Grievant many times during the probation period regarding the Grievant's poor productivity on some jobs, his lack of initiative and his poor attitude and excessive talking; that during several of these counseling sessions, the Plant Superintendent and the Material Coordinator were present; that the Department Manager has been a supervisor for many years; that he has evaluated numerous employes, passing most but failing a few; that the Union has never questioned his judgement previously; and that on three prior jobs he evaluated and passed the Grievant.

The Company also argues that the Union's witnesses who testified to the Grievant's performance are not qualified to evaluate employes; that they are not and have never been supervisors; that they have never had any training or instruction in employe evaluation; that they were only able to observe the Grievant on two of the 12 jobs that comprise the position; that the Department Manager judged the Grievant to be average to below average throughout the probationary period; that the Department Manager observed no trend toward improvement in spite of repeated warnings; that the Department Manager gave the Grievant a one month extension to the six month probationary period and warned the Grievant to improve his performance; that the Grievant's performance did not improve; and that, therefore, the Grievant failed the probationary period.

The Company submits that Article 2.1 of the collective bargaining agreement grants the Company the right to determine whether an employe passed probation; that the Company was not unfair or arbitrary in this decision; and that, therefore, the grievance should be denied and dismissed.

DISCUSSION

In Article 13.1 of the collective bargaining agreement between the parties, a grievance is defined as "any difference between the Company and an employe covered by this agreement as to any matter involving interpretation or application of any of the provisions of this agreement". At hearing and on brief the Union alleged a violation of Schedule "A" Rate Progression Schedule of the agreement. Although the allegation is present, the Union offers little if any evidence or argument to support its allegation of a violation of Schedule "A".

Instead, the Union's evidence and argument goes to a violation of Article 2.1 which states that the right "to promote and/or transfer employes within the plant . . . (is) vested exclusively in the Company". Indeed, this is the language the Company relies upon as its defense in this matter, arguing that it exercised its right in this case in a fair and nonarbitrary manner. The Union argues that the Company's failure of the Grievant during the probationary period was unreasonable in two ways.

First, the Union argues that the Grievant knew the job of Utility Operator I and, in addition, that he is a better worker than the present Utility Operator I. Yet the record is clear that the Department Manager counseled the Grievant on at least three occasions regarding poor production on some jobs, lack of initiative, poor attitude and excessive talking. The witnesses for the Union were fellow workers who did not view the Grievant's work on a daily basis, who were not observing the Grievant to judge if he was doing a capable job and who had no training or experience in evaluating employes. Thus, their opinion as to the Grievant's performance carries little if any weight in this matter. The Company's main witness, on the other hand, was the Department Manager who has evaluated employes in probationary positions for many years. This was the first grievance challenging a decision by him to fail an employe on probation. Not only does the Department Manager have experience evaluating employes, but his job was to observe the Grievant on a daily basis in order to evaluate the Grievant's job performance. In this task, he was aided by Company provided Job Training Progress Reports. This is the basis for the Union's other argument.

Second, the Union argues the Department Manager did not follow or

understand the Job Training Progress Reports. As to the Manager's lack of understanding, the record does not support the allegation. As to the Manager's not following the proper procedure in filling out the Job Training Progress Reports, the Union is correct that the reports were not filled out every day. This point might be more crucial if the probationary period was short, such as one week or 15 days where each day is a significant part of the probationary period. But here the probation period lasted seven months. The fact that the Manager did not fill out the reports daily does not seriously impair his ability to evaluate the Grievant on this job.

In order to find that the Grievant was able to perform the work of Utility Operator I in the Firedoor Department, the Union must show that the Department Managers and, therefore, the Company's evaluation of the Grievant's job performance and decision to fail the Grievant and transfer him to another position was in error. The Union has failed to do this. The Manager had counseled the Grievant on his shortcomings and extended the probationary period to afford him an additional month to improve. After seven months the Manager determined that the Grievant was not able to perform the work of Utility Operator I. In making that decision, the Manager may not have followed the procedure exactly, but the Union does not allege any bias on the Manager's side. Indeed, this Manager had passed the Grievant on three other jobs in the past. Absent a showing of prejudice on the part of the Manager or a showing that the decision was unreasonable, arbitrary or capricious, I must uphold the Company's decision in this matter.

For these reasons, based upon the foregoing facts and discussion, the arbitrator issues the following

AWARD

1. The Grievant was not able to perform the work of Utility I Firedoor.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 22nd day of February, 1990.

By _____
James W. Engmann, Arbitrator