

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
SUB-ZERO FREEZER COMPANY, INC. : Case 59  
and : No. 43922  
: A-4632  
LOCAL UNION 565, SHEET METAL WORKERS' :  
INTERNATIONAL ASSOCIATION, AFL-CIO :  
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Appearances:  
Mr. Paul Lund, Business Manager and Financial Secretary Treasurer, for  
the Union.  
Mr. Donald D. Emmerich, 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 May 15, 1990. No transcript of the hearing was taken and the parties submitted written argument, the last of which was received on June 4, 1990.

STIPULATED ISSUE:

The parties agreed during the hearing that the undersigned was to resolve the following issue:

Did the Company violate the contract when it disciplined grievant Lee Anderson with a three-day suspension without pay and, if so, what is the appropriate remedy?

CONTRACT PROVISIONS:

ARTICLE XV

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. Where an hourly employee is called to a supervisor's office for the purpose of investigating a matter that could lead directly to disciplinary time off, he/she will be informed of the nature of the matter to be discussed. All disciplinary actions taken by the Company shall be done in the presence of a Shop Committeeperson or Steward. The Union shall promptly be given a copy of any reprimand.

Any employee who works for six (6) months without committing another offense of that same nature shall have all references to disciplinary action expunged from the employee's personal record and thereafter return to Step 1 of the reprimand procedure as to the offenses of that nature. The aforementioned shall not apply to worker's compensation or unemployment compensation claims.

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

Dishonesty and defective workmanship shall be subject to disciplinary action up to and including a three (3)

day suspension. Any further violations of the same nature shall subject the employee to immediate discharge.

Reprimand Procedure: (Minor Offenses)

- Step 1. Verbal reprimand by Management:  
A reprimand form will be completed, indicating the reason for the reprimand and presented to the employee by his supervisor. The reprimand will be discussed with the employee.
- Step 2. Letter of warning from Management:  
A reprimand form will be completed, indicating the reason for the reprimand and presented to the employee by his supervisor. The reprimand, along with letter of warning, will be discussed with the employee.
- Step 3. Three day layoff:  
A reprimand form will be completed, indicating the reason for the reprimand and presented to the employee by his supervisor and Plant Manager or Personnel Director. A member of the Union Committee will be asked to attend the meeting to discuss the seriousness of the reprimand with the employee.
- Step 4. Termination of employment:  
A reprimand form will be completed, indicating the reason for the reprimand and presented to the employee by his supervisor and Plant Manager or Personnel Director. A member of the Union Committee will be asked to attend this meeting with the employee.

DISCUSSION:

It is undisputed that grievant Anderson was the last person to handle the die before it fell and was damaged. No other credible cause for the fall was presented at hearing. Thus, I am satisfied that it was grievant Anderson's lack of care when repositioning the die in question which caused the die to fall and be damaged. Therefore, the Company clearly had a valid basis for disciplining the grievant. The more difficult question is whether, as argued by the Union, Article XV limits the Company to imposing a verbal reprimand for the conduct in question.

Article XV, Section 2, requires the Company to utilize a progressive sequence of disciplinary steps, commencing with a verbal reprimand, except for certain specified offenses. "Defective workmanship" is listed as one of the exceptions to the progressive disciplinary sequence with the Company being allowed to impose up to a three-day suspension for the first offense. "Carelessness" is not a listed exception to the contractual "Reprimand Procedure."

The disciplinary notice form received by the grievant listed his offense as "carelessness." The "defective work" entry on the form was not marked by the Company. The Company's reply to Anderson's grievance also refers to "carelessness" and does not refer to the grievant's conduct as "defective workmanship." From the facts as developed at hearing, I believe the Company was correct when it characterized the grievant's action as "carelessness." Thus, though the Company argued at hearing that "carelessness" should be equated with "defective workmanship," I conclude that "carelessness" does indeed best describe the grievant's conduct. Therefore, Article XV, Section 2, limits the Company to imposing a verbal reprimand upon the grievant unless, as argued by the Company, a different result is warranted because the Union did not specifically raise the Article XV, Section 2, argument during the processing of Anderson's grievance.

Clearly, the parties are best served when both sides fully present their positions during the processing of a grievance. Settlement prospects are enhanced by a full and frank exchange of positions and the issues to be argued before an arbitrator, if settlement does not occur, thereby become better defined. However, where, as here, the contract does not state that arguments not previously raised are waived and where, as here, the Company was given the opportunity to fully respond to the Article XV argument, I am satisfied it would be inappropriate to find that the Union could not use Article XV, Section 2, to attack the Company's action.

Given the foregoing, it is my

AWARD

The Company violated the contract when it disciplined the grievant, Lee Anderson, with a three-day suspension without pay. The Company shall immediately reduce the suspension to a Step 1 verbal reprimand and shall make the grievant whole.

Dated at Madison, Wisconsin this 10th day of August, 1990.

By \_\_\_\_\_  
Peter G. Davis, Arbitrator