

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
: RIB MOUNTAIN LODGE NO. 2131, : Case 45
INTERNATIONAL ASSOCIATION OF : No. 43168
MACHINISTS AND AEROSPACE WORKERS, : A-4556
AFL-CIO :
and :
MARMET CORPORATION :
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Appearances:

Mr. James Richards, Jr., Business Representative, District 200, International Association of Machinists & Aerospace Workers, AFL-CIO, appearing on behalf of the Union.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Ronald J. Rutlin, appearing on behalf of the Employer.

ARBITRATION AWARD

Rib Mountain Lodge No. 2131, International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the Union, and Marmet Corporation, hereinafter referred to as the Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the Employer, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide a grievance involving a suspension. The parties waived their contractual provision providing for an arbitration board and Stuart Levitan, a member of the Commission's staff, was designated as the sole arbitrator. Hearing was held in Wausau, Wisconsin on February 20, 1990. The hearing was transcribed and the parties filed post-hearing briefs which were exchanged on June 6, 1990. Due to the subsequent unavailability of Arbitrator Levitan, the Commission, on June 27, 1990, designated the undersigned as arbitrator in this matter.

BACKGROUND

The Employer manufactures windows for commercial buildings. On September 21, 1989, the grievant had been employed for three to four months by the Employer as a fabricator in the Assembly Department. 1/ On that date, the grievant's supervisor asked if he would work overtime on Saturday, September 23, 1989 and the grievant agreed to work that date. 2/ There is a dispute as to the number of hours that the grievant agreed to work, with the supervisor insisting that the grievant agreed to work eight hours, 3/ and the grievant maintaining that he was unsure how many hours he could work and that he did not specifically agree to eight hours and also didn't indicate he wouldn't work eight hours. 4/

On September 23, 1989, the grievant reported to work and, after three and one-quarter hours of work, he went to the lead worker and told him that he was done with what he had to do and was going home. 5/ The lead worker told the grievant he should wait until the supervisor came in but the grievant stated he was going to leave and did so. 6/ By a letter dated September 29, 1989, the grievant was suspended for three days for leaving the plant without authorization. 7/ Thereafter, the grievant filed a grievance which is the subject of this arbitration. 8/

ISSUE

Did the Employer have just and proper cause to suspend the

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- 1/ Tr. 61-62, 75-76.
 - 2/ Tr. 62-63, 77, 79-80.
 - 3/ Tr. 63, Emp. Ex. 10.
 - 4/ Tr. 77.
 - 5/ Tr. 65, 77-78, 88.
 - 6/ Tr. 88, 93.
 - 7/ Jt. Ex. 5.
 - 8/ Jt. Ex. 4.

grievant for three days for his conduct on September 23, 1989? If not, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 16
Discipline and Discharge

Section 1. No employee shall be disciplined or discharged except for just and proper cause. The Company shall notify a member of the Bargaining Committee of the Union in advance, if possible, of the discipline or discharge of an employee.

When the company decides to discipline or discharge, it shall give the reasons in writing, within twenty-four (24) hours to the Chairman of the Union's Bargaining Committee, or in his absence to another member of the Bargaining Committee.

UNION'S POSITION

The Union contends that there was not just and proper cause for the grievant's three-day suspension. It submits that at the time of the grievant's suspension, he was a relatively new employe of three or four months and the Employer never explained to him the proper procedures to be taken on the shop floor. It claims that the grievant didn't have any more work to do and felt uneasy standing idle, therefore he asked the lead worker for permission to leave and the leadman said it was okay, so he thought he had permission to leave. It points out that although the grievant had followed a different procedure for leaving early during the week, this was the first instance of leaving involving overtime work on a Saturday. It notes that the lead worker thought that no supervisors were present when the grievant left. It refers to the supervisor's testimony that if people were running out of work and people wanted to leave early, the leadman could let them go. It maintains that the grievant thought he had permission to leave. The Union also notes that employes who agree to work overtime and then don't show up are given no discipline. It takes the position that the Employer has not shown just and proper cause for the suspension and the Employer has not been consistent in its discipline for Saturday overtime violations. It asks that the grievance be sustained.

EMPLOYER'S POSITION

The Employer contends that the grievant was aware that he had to complete an authorized absence form and obtain supervisory approval before leaving work, having done so twice before, in July, 1989 and August, 1989. It also claims that the grievant had committed to work eight hours of overtime on Saturday, September 23, 1989. It submits that the grievant's attempt to justify his actions on the grounds that he had not committed to work eight hours of overtime on September 23, 1989 and had the permission of the lead worker to leave early is inconsistent with the testimony of other witnesses and is simply not credible. It notes that in contrast to the grievant's testimony on this point, the grievant's supervisor testified that the grievant agreed to work eight hours on Saturday and the supervisor recorded that commitment. It also points to the lead worker's testimony that he said the grievant should wait until the supervisor came in before leaving and that he never gave the grievant permission to leave but merely stated "okay" to indicate that he understood that the grievant was leaving on the basis that he had caught up with his work. It insists that the grievant knew he needed permission to leave early on September 23, 1989, but he didn't even try to obtain such permission but simply left, so discipline was justified and reasonable. It argues that three days' suspension is not unreasonable, arbitrary or capricious and is consistent with past discipline. It requests that the grievance be denied.

DISCUSSION

The grievant knew that he had to get permission to leave work on Saturday, September 23, 1989. 9/ The grievant asserted that he had not agreed to work any set number of hours on Saturday except that he had to work the minimum three hours and the lead worker gave him permission to leave after he worked three and one-quarter hours. The evidence indicates that the supervisor on Thursday, September 21, 1989 got definite commitments from those he asked to work as to the precise number of hours they would work so he would know how many employes to call in. 10/ The record notations left by the supervisor evidence these commitments. 11/ It is not plausible that he would take an

9/ Tr. 83.

10/ Tr. 62-63, 107, Emp. Ex. 10.

11/ Emp. Ex. 10.

indefinite commitment from the grievant and it is therefore concluded that the grievant made an eight-hour commitment. Employees can leave after they have worked their commitment 12/ so if the grievant had worked his commitment, he could have left without getting any permission from the lead worker. His assertion of getting permission must mean that he was leaving before his commitment was completed and therefore it is consistent with the supervisor's record and testimony that the grievant committed to work eight hours on Saturday, September 23, 1989. Therefore, the grievant did not work his commitment and needed permission to leave early.

Although the grievant admitted that he knew how to get permission to leave work early on weekdays, the Union asserted that overtime on Saturday was different. Once an employe accepts an overtime assignment, he obligates himself with respect to attendance and conduct the same as during a regular work day. 13/

The grievant asserted that the lead worker gave him permission to leave early. 14/ The lead worker testified that he had no authority to allow employes to leave early, 15/ and that he did not give the grievant permission to leave early but told him to wait until the supervisor came in. 16/ The grievant said he was going to leave and the lead worker said he understood that he was going to leave. 17/ The grievant then left. This scenario indicates that the grievant never sought or received permission to leave but simply reported that he was leaving because he had completed the work he had to do. Therefore, it is concluded the grievant was supposed to work eight hours but left without permission before the eight hours was completed and therefore was appropriately subject to discipline.

The grievant was given a three-day suspension for this misconduct. A three-day suspension is not unreasonable for this offense and is consistent with prior discipline for similar offenses. 18/ The Union noted that employes who don't show up for overtime after committing to work the overtime are not disciplined by a three-day suspension. The Union is mixing apples and oranges in that the failure to report for overtime is covered by the mutually agreed absenteeism policy. 19/ On the other hand, leaving work early has been treated differently by the parties and has subjected the offender to immediate discipline of three days. 20/ Therefore, the Union's arguments with respect to inconsistent application of discipline are not persuasive. The Employer has not been shown to have abused its discretion in meting out the three-day suspension for the grievant's leaving early and the discipline is deemed appropriate in this case.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The Employer had just and proper cause to suspend the grievant for three days for his conduct on September 23, 1989, and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 30th day of August, 1990.

By _____
Lionel L. Crowley, Arbitrator

12/ Tr. 65.

13/ Georgia-Pacific Corp., 72 LA 536 (Dunham, 1979).

14/ Tr. 77, 82.

15/ Tr. 89.

16/ Tr. 88, 93.

17/ Tr. 93.

18/ Emp. Ex. 2, 3, 4.

19/ Tr. 113, 117, 123.

20/ Tr. 122.