

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
SUB-ZERO FREEZER COMPANY, INC. : Case 60
and : No. 44190
SHEET METAL WORKERS' INTERNATIONAL : A-4656
ASSOCIATION, LOCAL UNION 565, AFL-CIO :
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Appearances:

Mr. Paul Lund, Business Manager and Financial Secretary/Treasurer, for
the Union.
Mr. Donald D. Emerich, Personnel director, for the Company.

ARBITRATION AWARD

Sheet Metal Workers' International Association, Local Union 565, AFL-CIO, herein the Union, and Sub-Zero Freezer Company, Inc., herein the Company, requested that the Wisconsin Employment Relations Commission designate Douglas V. Knudson as an arbitrator to hear and resolve a dispute. The undersigned was so designated. Hearing was held in Madison, Wisconsin on July 31, 1990. No transcript of the hearing was taken. The parties filed post-hearing briefs, the last of which was received on August 21, 1990.

ISSUE:

The parties were unable to stipulate to the issue and agreed that the arbitrator should frame the issue.

The Union proposed the following issue:

Did the Company have appropriate justification for designating the new incentive rates established in October, 1987 for handle molding assembly operations as temporary rates? If not, what is the appropriate remedy?

The Company did not agree to the Union's proposed issue and requested the arbitrator to frame the issue:

The undersigned believes the following to be an accurate statement of the issue:

Were the incentive rates, set in October of 1987, for the handle molding assembly operations temporary or permanent rates? What remedy, if any, is appropriate?

BACKGROUND:

The grievant, Bruce Eggers, has been a bargaining unit employe of the Company for approximately 15 years. For about the last four years, Eggers has been assigned to a job classification referred to as Test Room Operator, a direct incentive job. Eggers conducts tests on newly assembled freezers and refrigerators before the units are shipped.

Some employes holding incentive positions, who are able to get far enough ahead on their regular production duties, are allowed to take on some additional work on smaller parts or sub-assemblies. Such additional work is done on time which is internal to the employe's regular incentive-rated duties and also is paid on an incentive piece-rate basis, thereby permitting the employe to increase his/her total incentive earnings.

The Company has allowed Eggers to perform such fill-in work when he has available time. Initially, the fill-in work was making door gaskets. When Gene Powers was assigned to be the supervisor over Egger's work area, Powers moved the door gasket work to another employe and transferred to Eggers the handle molding assembly operations, which consisted of cementing small magnets to molding strips. Those strips are applied later to the inner surfaces of door handles over the screws which attach the handles to the refrigerators and freezers. Because the magnets initially came in a coil, Eggers experienced a problem in getting the magnets to lay flat when being cemented to the strips. Ultimately, the Company was able to get boxes of individual magnets, obtained an improved cement and also devised a fixture for putting magnets on 10 shorter molding strips at a time rather than just one longer molding strip.

In September, 1987, Powers told Eggers there would be a timestudy of the handle molding assembly operations since the changed methods were now in place. The following day, an industrial engineer, David Schueler, came to Egger's

work area with a stopwatch, a clipboard and some forms. For about two hours Schueler observed Eggers assembling the long molding strips with four magnets per strip. The next day Schueler observed Eggers for about two and one-half hours while Eggers assembled shorter molding strips, i.e., those with two or three magnets per strip.

After Schueler's observations of Eggers, the daily production cards for the molding assembly operations contained revised minutes per piece allowances. The cards were not marked in any manner to indicate the rates were temporary. Eggers asked Powers if the rates were permanent. At that time Powers had not received the process sheets, i.e., write-ups, from industrial engineering. In fact, it was six or more weeks after Schueler observed Eggers before Eggers received the process sheets. During that time period, Eggers continued to ask Powers if the rates were permanent. Powers told Eggers that as far as he knew the rates were permanent.

In late 1989 James Motelet was hired by the Company as the industrial engineering supervisor. Motelet wanted to reduce the number of temporary rates and replace them with permanent rates. One of the rates Motelet believed to be a temporary rate was the rate for the handle molding assembly performed by Eggers. Around mid-April of 1990 Motelet advised Eggers that the handle molding assembly operations would be studied so a permanent rate could be set. Eggers told Motelet that he thought the rate already was a permanent rate because the production cards did not designate the rate as temporary. Motelet went through the industrial engineering records and could find no paperwork setting a permanent rate for the handle molding assembly operations. The records contained copies of the process sheets from October of 1987 with the rate changes, but no paperwork to show that a standard timestudy had been done to set a permanent rate in October of 1987.

The daily production cards Eggers began receiving after Schueler observed him in October of 1987 did not designate the rates to be temporary, as at least some of the cards had done prior to October of 1987, e.g., part no. 4-13-103-0. However, Company records show that on October 6, 1987 Schueler issued rate change notices which changed the rates from permanent to temporary for part nos. 4-13-101-0 and 4-13-097-0. The top portion of one set of the process sheets of the same date for those parts designate the rates to be temporary. Another set of process sheets for the same parts do not contain a temporary designation on the top portion of the sheets. The temporary designation does appear on the bottom portions of both sets of the process sheets, which portions describe the elements of the respective operations. Normally, several copies of the process sheets are prepared with the following distribution; one copy stays in industrial engineering, one copy goes to accounting, and one copy goes to the supervisor of the operation. Powers testified that he gets two copies of a process sheet of which he keeps one copy in his desk and puts the other copy in binder in the area where the operation is performed. Said binder is available to the employees.

The daily production cards given to employees for the recording of production runs, are reproductions of the top portions of the process sheets.

RELEVANT CONTRACTUAL PROVISIONS:

SUB ZERO INCENTIVE PLAN

A. TIME STUDY AND WAGE INCENTIVE PROCEDURE

Section 2. The worker or workers who will be time studied shall be notified prior to the beginning of any time study.

Section 5. Operations shall be broken down into elements which will have clear breakoff points. Elements will be broken down in such a manner as to require a watch reading which may be not less than 5/100 of a minute. An explanation of a variation from this rule not followed must appear on the observation sheet.

Section 6. When an operation is being time studied for the purpose of setting permanent production standards, or checking standard data, a sufficient number of pieces, not less than ten (10), as determined by the time study person, shall be used to give statistical reliability to the resulting area.

Section 18. The Company shall, where practical, establish a temporary standard on all experimental, new and defective material work by the best available method. The incentive worker shall receive the "M" Number rate for experimental, new and defective material work until temporary standards are established. The Company will make every reasonable effort within the means at its disposal to establish permanent standards within as short a time as possible.

POSITION OF THE UNION:

The Company did not have justification to designate the handle molding assembly incentive rates established in October of 1987 as temporary rates.

In view of the events which occurred, Eggers had every right to believe that the new rates established in October of 1987 were permanent rates. Changes in tools, materials and methods of the operation had evolved into a final form. He was notified that the job would be timestudied. The industrial engineer came to the work station with a stopwatch and a clipboard and recorded time observations on the usual form. The observations were done over the course of at least four hours, during which time Eggers produced well over the number of pieces necessary for a statistically reliable timestudy. The production cards with the revised rates did not contain a designation of temporary.

None of the testimony by the Company's witnesses gave any creditable explanation of why the rates were supposed to have been left temporary. The Company conveniently discovered the rates were temporary because it believed Egger's earnings were excessive in relation to the plant average.

The Union seeks a finding that the disputed rates are permanent rates and should not have been changed.

POSITION OF THE COMPANY:

The production cards should designate when an incentive rate is temporary, but the cards are only copies of the top half of the process sheets. The process sheets are the primary time study documents in designating whether a rate is temporary or permanent. The process sheets on file for the handle molding assembly operations were marked temporary at the top of the list of elemental breakdown of times. It is common knowledge in the plant that such a designation means the entire study is temporary.

Even if a timestudy was done in October of 1987, such would not prove the rates had changed from temporary to permanent. A permanent rate is not always developed as a result of a timestudy. If a permanent rate had been established, there would be documentation of such a rate.

Eggers feared he would lose money if the rates were restudied, so he filed a grievance.

The Company's records are right. The Union produced no documents to refute those records. Eggers was not given permanent rates on or after October 6, 1987. The Company has the right to restudy the temporary rates. The grievance should be denied.

DISCUSSION:

There is no dispute between the parties over the fact that changes in the handle molding assembly operations were sufficient to justify the setting of new incentive rates for said operations in October of 1987. The dispute arises over the question of whether the new incentive rates were temporary or permanent rates.

Support for the Union's position, that the new rates were permanent, is found in the fact that the daily production cards containing the new rates did not designate the rates as temporary, which is the normal condition. Further, Eggers' supervisor, Powers, advised Eggers that as far as he knew the new rates were permanent. Also, the revised rates resulted from a timestudy of the operation by Schueler. Finally, the rates remained in effect without question for an extended period of time, i.e., from October of 1987 to April of 1990.

In spite of such support, the undersigned is not persuaded that the revised incentive rates issued in October of 1987 were permanent rates. The process sheets dated October 6, 1987 for the handle molding assembly operations all contain a temporary designation in the bottom portion where the job elements are listed. Some copies of the process sheets also carry a temporary designation on the top portion, from which the daily production cards are prepared, even though other copies of the process sheets for the same part numbers do not have a temporary designation. The Company's explanation for such a discrepancy is that the omission of the temporary designation on some of the process sheets was an error. Such an explanation is plausible. There was no evidence submitted to show that the process sheets, which contain the temporary designation on the top portion, were created subsequent to October of 1987 in an effort to buttress the Company's position that the rates are temporary. In fact, as part of the record there are rate change notices for the same part numbers dated October 6, 1987 which notices specify that the new rates for those part numbers are temporary.

The rates at issue herein have been temporary for an extended period of time. However, there are other temporary rates which also have been in effect for more than one or two years. Apparently in December of 1986 the Company began production of some new product models. Because of the need to set rates on the work for those new models in addition to numerous changes in engineering, machinery and equipment resulting from Company growth, industrial engineering was unable to establish permanent rates on all jobs, and instead put several hundred temporary rates into effect. Many of those rates remained temporary for long periods of time and some were still temporary at the time the instant grievance arose.

After becoming the industrial engineering supervisor in late 1989, Motelet began reviewing the incentive rate files. In addition to a large number of temporary rates, he found some process sheets on which the rate was not designated temporary in the top portion of the sheet even though the rate was designated temporary in the job writeup on the bottom portion of the sheet. Motelet decided to have industrial engineering clarify the temporary status of the rates on those jobs as well as attempt to replace temporary rates with permanent rates on as many jobs as possible.

In light of this background, the fact, that the rates at issue herein were temporary for over two years, does not act as a bar to the Company's decision to now replace said rates with permanent rates.

Since the daily production cards are prepared from the top portion of the process sheets, the absence of a temporary rate designation on the process sheet would result in the same absence on the daily production cards. While unfortunate, such an error does not convert a temporary rate to a permanent rate.

Because of the absence of the temporary rate designation on the daily production cards, one can understand why both Eggers and Powers assumed the revised rates were permanent. Nevertheless, a review of all of the documents results in the conclusion that the revised incentive rates for the handle molding assembly operations set in October of 1987 were intended to be temporary rates. Therefore, the Company did have the right to announce its intent to restudy those rates in April of 1990 for the purpose of establishing permanent rates for the handle molding assembly operations.

Based on the foregoing, the undersigned enters the following

AWARD

That the incentive rates for handle molding assembly operations, which were set in October of 1987, were temporary rates; and that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 16th day of October, 1990.

By _____
Douglas V. Knudson, Arbitrator