

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 APPLETON MILLS : Case 31
 : No. 44200
 and : A-4657
 :
 UNITED TEXTILE WORKERS OF AMERICA, :
 LOCAL NO. 78, AFL-CIO :
 :

Appearances:

Mr. Eugene L. Krull, International Representative, United Textile Workers of America, AFL-CIO, on behalf of Local 78 and the Grievant.
Mr. Rhea A. Myers, Stroud, Stroud, Willink, Thompson & Howard, on behalf of the Employer.

ARBITRATION AWARD

According to the 1988-91 collective bargaining agreement between the parties, the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an impartial arbitrator to hear and resolve the discharge of the Grievant, B.E., on April 9, 1990 for removing Company property from the Company's facility on Saturday, April 7th, without asking permission. The undersigned was designated arbitrator and made full written disclosures to which there were no objections raised. Hearing was held on September 25, 1990 at Appleton, Wisconsin, at which time the parties waived their rights to have a tripartite arbitration panel hear this case pursuant to Article XIII of the agreement. No stenographic transcript of the proceedings was taken. The parties submitted all post-hearing briefs by October 10, 1990 and they were thereafter exchanged by the undersigned.

ISSUE

The parties stipulated that the following issue is before the undersigned herein:

Did the Company have legitimate reason to discharge B _____ E _____; if not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE AND WORK RULES

ARTICLE II
 MANAGEMENT FUNCTIONS

. . . .

Section 3. The management of the plant and the direction of the working force and of the affairs of the Company shall be vested exclusively in the Company as functions of management. Such functions of management include, among others, the following:

- (a) The right to hire, transfer from one job to another, promote, and demote.
- (b) The right to suspend, discharge, and lay off employees for legitimate reasons.
- (c) The right to supervise the work of each employee, including the right to determine production schedules, and to assign individual jobs in each department.
- (d) The right to establish reasonable rules and conditions for operating the plant and covering the conduct of employees in the plant, and to determine the times when shifts shall begin and end.
- (e) The right to determine the product to be manufactured, the materials to be used, and the methods, processes, and equipment to be employed.

The performance of such functions shall be subjected to the terms and conditions of this contract.

. . .
ARTICLE XI - SENIORITY
. . .

Section 29. An employee shall forfeit all rights to seniority and shall be dropped from the seniority list of the Company and, if rehired, shall be placed at the bottom of the seniority list, if

- (a) He quits, or
 - (b) He is discharged for cause, or
- . . .

The "Factory Work Rules" provide in pertinent part, as follows:

. . .

11. PLANT CONDUCT: As in any organization, certain basic rules of conduct must be followed in order for the organization to function effectively. Among the actions that are unacceptable are: horseplay, use of abusive or profane language, dishonesty, destruction of property belonging to the company or another employee, and the failure of an employee to follow the instructions of his foreman or other authority.

. . .

BACKGROUND FACTS NOT IN DISPUTE

The Grievant had worked for the Company as a maintenance electrician without disciplinary incident for approximately 8 years prior to the incident of April 7, 1990. During 1989, the Company determined that it had suffered substantial losses due to theft by employees throughout the plant. A new drill, walkie talkies, battery chargers, scissors, tools, calculators and gram scales had all been removed from the plant by employees without supervisory permission and the Company never found out who had stolen the items. In December 1989 or January 1990, John Stoffel, Vice President of Manufacturing and Plant Superintendent Michael Miller talked with Union President Peterson on at least two occasions and asked Peterson's help in telling employees that the Company would be stepping up its efforts to catch anyone who had engaged in theft and that in the future, employees caught stealing would be discharged. Peterson indicated that he would discuss the problem with employees at the next Union meeting but Peterson urged the Company to post a notice or notices indicating that stealing would be punished by immediate discharge. The Company did not post any notices regarding stealing at the plant from December 1989 to the date of the instant hearing, although its "Factory Work Rules" were posted at the plant at all relevant times. Peterson made the announcement, above, at the next Union meeting which B.E. admittedly attended.

It is undisputed that the Company has had a long-standing past practice of allowing employees to remove unwanted items from the plant so long as they had prior permission from management. B.E. had asked several different supervisors for permission to remove items from the plant over time and B.E. has been granted such permission. For example, approximately two weeks before his discharge, B.E. asked Production Superintendent Michael Miller if he (B.E.) could remove some scrap wood and a broken chair from the plant and Miller gave him that permission. Also, B.E. admitted at the instant hearing that he was aware of the Company's rule requiring prior supervisory permission to remove items from the plant at the time he removed the box of items on April 7th.

On Friday, April 6, 1990, B.E. was at the end of a project and to keep busy he began cleaning out the maintenance departments parts storage cabinet. This cabinet was generally used for storage of new and used items left over after jobs were completed. Such things as conduit conductors, electrical parts and machinery were stored there. Employees who had finished a project and had not been assigned to a new job would keep busy by cleaning out this cabinet, which therefore ends up being cleaned out by different employees approximately every three (3) to six (6) months. On April 6th, B.E. had placed items in a pile, cleaning out this cabinet and he asked his direct line supervisor, Wes Nimmer, if he could take home some damaged light fixtures that had been in the cabinet. Nimmer refused to give B.E. permission to remove those items and Nimmer told B.E. to take the fixtures to the basement, as the Company might be able to use parts from those fixtures. Nimmer and B.E. did not discuss the

matter further and Nimmer did not work the next day, Saturday, April 7th.

On Saturday, April 7th, B.E. continued cleaning out the storage cabinet. B.E. had put items in a box, intending to take them home on Saturday, April 7th. On Saturday, B.E. put the box on a cart and took it outside the plant to the loading dock and put it behind some wooden spools. After this, B.E. spoke to Plant Superintendent Michael Miller, as Miller walked through the plant about B.E.'s work on a rifle of Miller's. B.E. did not ask Miller if he could take the items in the box home.

The reason Miller had come to the plant that morning was because he had received a phone call earlier that morning from an unidentified employe who told Miller that a box of items that had been discovered that morning among the wooden spools on the loading dock. Miller told the employe who contacted him to leave the box where it was and that he (Miller) would handle it. Miller then went to the plant where he viewed the box of items and then stopped in several departments of the plant including B.E.'s. It was at this time that Miller spoke briefly to B.E. about the repair of Miller's rifle.

Miller then waited until just before the end of the shift at which time, he went to his car and drove it around to the loading dock where he waited to see if anyone would come for the box of items. After the end of the shift, Miller observed B.E. drive his truck around to the loading dock and B.E. then placed the box in his truck.

At this point, Miller confronted B.E. B.E. told Miller it was a box of "junk." Miller asked if B.E. had gotten permission to take the items. B.E. initially responded, "Yes. I did. From Wes Nimmer." Miller suggested that they call Wes to check. B.E. then admitted he had not gotten permission to take the items. Miller called Union steward Ebben to look at the box and talk to B.E., if B.E. wished. B.E. asked what would happen and Miller said that the matter would be dealt with the next week. Miller then locked the box of items in a storage bin.

There is no allegation in this case that B.E. was dealt with unfairly during the investigation of this case or the processing of the grievance or that he was denied due process at any point. On Monday, April 9, 1990, Company officials decided to terminate B.E. following several meetings and an investigation of the facts surrounding the incident of April 7th. At one of these meetings, B.E., represented by the Union, stated that he had really made a "dumb mistake" on April 7th, that he had never done anything like this before and if given another chance by the Company this type of incident would never occur again. At this time, B.E. also admitted to having been present at the Union meeting in which Union President Peterson had made the announcement about theft being a dischargeable offense and B.E. admitted that he had been fully aware of the requirement of getting prior permission before removing anything from the plant, but he had chosen not to ask permission.

DISPUTED FACTS RAISED BY THE PARTIES

Although it is undisputed that the box which B.E. removed from the plant without permission on April 7th contained approximately 62 items - some new and many used items ranging in replacement value from \$0.37 to \$50.00 each, the Union disputed the actual value of the items removed by B.E. In this regard, the Union noted that many of the items were used or broken and that generally employes, such as maintenance electrician lead man Graper and B.E., have been told by supervisors that used items (if out of the package) and broken items, should simply be thrown away as junk. In addition, under cross examination, Company witnesses admitted that they did not check and they were unaware of whether the mechanical items in the box were in working order after the box was seized by Miller. Company witnesses also admitted that the values placed on each item were replacement values not the actual values of the items as they were found in the box.

In addition, the Union put into evidence a sampling of the announcements posted by the Company on its bulletin boards in the past year. This evidence showed that the Company has posted information of much less importance to employes than an anti-theft policy would have been. Finally, no evidence of prior discipline of other employes or B.E. relating to theft was offered by either the Union or the Company here.

POSITIONS OF THE PARTIES

Union

The Union did not contest that B.E. should be disciplined in connection with his actions of April 7, 1990. Rather, the Union asserted that the penalty

of discharge was too severe in the case of B.E. In this regard, the Union noted that B.E. had an unblemished eight year work record prior to his removing the box of approximately 62 items without permission on April 7th, and that B.E.'s supervisor confirmed that B.E. had otherwise been a satisfactory employee prior to April 7th. Furthermore, the Union contended that the Company not only over-valued the items that B.E. had removed for purposes of the instant hearing but also that the Company had failed to contest the fact that many of the items removed by B.E. were considered junk or unusable by maintenance employees as well as by management. In addition, the Union pointed out that Company witnesses admitted that they had not checked to see if any of the items in the box were actually in working order after B.E. was caught removing the box of items from the plant.

The Union also argued that despite the Union's requests to do so, the Company failed to post notices regarding employee theft problems (and the consequences therefore) prior to B.E.'s discharge. In this regard, the Union submitted five documents which had been posted by the Company which it urged, were of far lesser importance and potential impact on employees than a notice regarding theft would have been.

On this basis, the Union asserted that the Company lacked "legitimate reasons" to discharge B.E. pursuant to Article II of the contract. Also, the fact that the Company cited Work Rule 11 which makes no specific reference to theft, as a dischargeable offense, the Union asserted, supports a conclusion that the Company did not consider theft serious enough before B.E.'s case arose to properly highlight theft as a dischargeable offense so that employees could be appropriately forewarned. In sum, the Union sought the reduction of the penalty herein.

Company

The Company asserted that the penalty of discharge is warranted here and should stand. The Company noted that there was no dispute regarding the basic facts herein. The Company had twice conferred with the Union regarding the problem of theft in the plant and the Company sought the Union's assistance in spreading the word that the normal penalty for theft would be discharge. The Grievant also testified that he was aware of the rule requiring prior permission to remove items from the plant and that he chose not to ask permission to remove the items on April 7, 1990. B.E. also admitted that he had initially lied to Plant Superintendent Miller when confronted by Miller outside of the plant on April 7th, stating at first that he had gotten prior supervisory permission to remove the items when that was actually not the case. In addition, the Company pointed out that just two weeks prior to his removing the box of items without permission, B.E. had asked and received permission to remove a chair from the plant. Also, B.E. had asked his supervisor if he could take home some light fixtures (on or about April 6th) while he was cleaning out the cabinet (just prior to his removing the items on April 7th) and his supervisor had refused to grant him that permission. Thus, the Company contended, B.E. was well aware of the proper procedure for removing items from the plant and B.E. intentionally chose to ignore that procedure.

The Company asserted that its rule regarding getting prior permission before removing items from the plant is reasonable and necessary. If this rule were abolished, the Company urged, employees could potentially lose the benefit of being able to remove unwanted items from the plant with permission. The Company argued that B.E.'s intentional violation of this rule amounted to nothing less than theft which the Company should not be forced to countenance.

The Company pointed out that it fully investigated the facts surrounding the April 7th incident before deciding to discharge B.E. and that B.E.'s clean work record does not lessen the gravity of B.E.'s knowing violation of the work rules here. The Company urged the Arbitrator to sustain the discharge.

DISCUSSION

Notably, the Union does not dispute the basic facts underlying this case, nor does the Union take issue with the Company's handling of the investigation of the incident of April 7th. Rather, the Union insists that the Employer should have done more, in late 1989 and early 1990, to impress upon employees that stealing would no longer be tolerated by the Company. In addition, the Union contested the monetary values placed upon the items removed from the plant by B.E. as well as their actual usefulness to the Company. The Union also pointed to B.E.'s unblemished eight year work record in support of its argument that the Arbitrator should set aside the Company's decision to discharge B.E. under the circumstances here.

Having weighed and considered all of the relevant evidence and arguments, I find that the grievance should be denied and dismissed, and, in the circumstances here, there is insufficient reason to set aside the Company's judgment

that B.E. should be discharged for his actions of April 7th. In this regard, I note that the replacement values placed upon the more than 60 items removed from the plant by B.E. were not persuasive of the ultimate issue here and these values are only useful for comparison purposes. Similarly, whether the Company checked out the items to determine if any of the mechanical items actually worked is also not determinative of this case. In my view, the theft of items, even items of little value to an employer, is wrong and should be punishable by discharge. Furthermore, I believe that this Employer's employees could have no doubt that removal of items from the plant without permission was wrong at all relevant time herein, especially where, as here, the Employer has traditionally allowed employees to remove items so long as they ask and receive permission to do so in advance. I note further that B.E. was well aware of the policy that he could have asked and might have received permission to remove the box of items, but on April 6th and 7th, B.E. chose not to ask permission of either his immediate supervisor or of Superintendent Miller when B.E. had the chance to do so.

I do not believe that the Company was under any obligation to do more than it did in late 1989 and early 1990, regarding notifying employees of its position should a theft occur. Here, the Company went through channels to Union President Peterson and discussed the problem of employee thefts with him; the Company sought the Union President's help and received assurances that Peterson would raise the topic at the next Union meeting and inform employees that theft would result in discharge. The Union President made the announcement regarding theft at the next Union meeting and B.E. admitted that he had been present at that meeting. Thus, in the circumstances here, the fact that the Company did not post a notice regarding theft in the plant does not require that I reach a different conclusion in this case. In addition, the fact that the Company does not have a specific rule prohibiting theft does not mean that it should therefore be held to have condoned stealing. Work Rule 11 prohibiting dishonesty clearly covers the incident of April 7th. I note particularly that ordinary common sense would require employees to conclude that since it is dishonest to steal, Work Rule 11 should apply to stealing. 1/

Finally, I turn to B.E.'s unblemished eight year work record with this Company. Although B.E.'s record is impressive, and his demeanor, after Miller initially confronted him on the loading dock on April 7th, is laudable, these circumstances are insufficient for me to second-guess the Company in regard to the penalty here. Given the overall fairness with which the Company treated B.E., the magnitude of the problem of theft at the Company, the Company's efforts to enlist Union and employee support to eradicate the problem of theft, and B.E.'s specific knowledge of the Company's policies, old and new, I find that the Company's decision to discharge B.E. was warranted under the circumstances.

Based upon the relevant evidence and arguments herein and my analysis thereof I issue the following

AWARD

The Company had legitimate reason to discharge the Grievant, B.E.

The grievance is hereby denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 21st day of December, 1990.

By _____
Sharon Gallagher Dobish, Arbitrator

1/ Furthermore, I note that B.E. initially attempted to lie to Miller about having received permission from his direct supervisor, Nimmer, to remove the box of items, and that this dishonesty (although retracted later) would also be prohibited by Work Rule 11.