

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 SUB-ZERO FREEZER COMPANY, INC. : Case 62  
 : No. 45266  
 and : A-4755  
 :  
 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' 1990-1993 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 March 12, 1991. No transcript of the hearing was taken and the parties submitted written argument, the last of which was received on April 12, 1991.

STIPULATED ISSUES

The parties agreed to the following statement of the issues.

1. Is the grievance timely filed and therefore arbitrable?
2. If so, did the Company violate the contract when it allowed employe Steve Mautz to exercise a seniority shift preference by classification and job over the grievant Joyce Clawson and, if so, what is the remedy?

DISCUSSION

On January 4, 1991, the grievant received a copy of a document entitled "Transfer Request" which advised her that effective February 4, 1991, she would be transferred from first shift to second shift. She immediately discussed the transfer with her foreman to discover whether she could avoid the transfer by moving to a different first shift position. She was advised by her foreman that once the Transfer Request was filed, he could not consider such a move. Thereafter, the grievant continued to unsuccessfully discuss the issue with other management personnel. On January 14, 1991, the grievant filed her grievance over the transfer.

The contract states:

ARTICLE XVII

ADJUSTMENT OF GRIEVANCE

Section 1. Should any difference arise between the Employer and the Union and its members as to the meaning and application of the provisions of this Agreement, there shall be no work stoppage or strike, nor shall the Employer resort to a lockout, nor shall there be any work stoppage or strike authorized by the Union, nor lockout by the Company during the life of this Agreement. For the purpose of this Agreement the term grievance shall mean any dispute between the Employer and the Union, or between the Employer and an employee or group of employees concerning the effect, interpretation, application, claim of breach or violation of this Agreement. An earnest effort shall be made to settle such difference immediately as set forth herewith following the grievance procedure.

Section 2. Settlement of grievances shall be by the following procedure:

- Step 1. Oral discussion between grieved employee and the foreman. (Employee's Shop Steward may be present if requested by either party). If grievance cannot be resolved after oral discussion, it shall be reduced to writing and submitted to the foreman within three (3) working days from date of

alleged violation, except grievances relating to standards. . . .

Step 2.

. . .

The time limits mentioned in this Article are maximum and grievances and disputes shall be settled immediately whenever possible. However, the time limits may be extended by mutual agreement. The waiver by the Company or the Union of any such time limits in any case shall not constitute a waiver by the Company or the Union of any such time limits or its rights to insist on adherence thereto in any subsequent case.

Section 4. . . . . The Arbitrators shall not have authority to decide any dispute other than whether the Agreement has been violated, and he shall not add to, detract from or modify in any way the terms of this Agreement.

The Company argues that the grievance was not timely because it was not filed "within three (3) working days from date of alleged violation." The Union counters by noting the grievant's ongoing discussion with management and asserting that only when these discussions were concluded was the grievant obligated to reduce the grievance to writing. 1/

The Union's argument would be persuasive if the contract language linked the obligation to file a grievance to the end of settlement discussions with any management official. However, the contract reflects the parties' agreement that it is the "date of alleged violation" not the end of settlement discussions which triggers the time limit in question. While the contract allows the parties to extend time limits by mutual agreement, no such agreement was sought or obtained here. Further, there is no evidence the grievant delayed filing her grievance because of her ongoing discussions with management.

Under the instant circumstances and the previously quoted contractual language regarding the right of either party to insist on adherence to grievance time limits, I find the grievance untimely. Therefore, it is my

AWARD

The grievance was not timely filed and therefore is not arbitrable. Thus, the grievance is dismissed.

Dated at Madison, Wisconsin this 5th day of June, 1991.

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

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1/ The Union also notes but does not argue that the "date of alleged violation" did not occur until the actual effective date of the transfer. Such an argument, if made, would be inconsistent with the fact that the grievance was filed prior to the effective date and with the stated purpose of the parties' grievance procedure that "disputes shall be settled immediately whenever possible."