

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 LOCAL UNION 2190 of UNITED :  
 BROTHERHOOD OF CARPENTERS & JOINERS :  
 OF AMERICA, MIDWESTERN INDUSTRIAL :  
 COUNCIL : Case 4  
 : No. 45932  
 and : A-4799  
 :  
 LAMINATED PRODUCTS, INC. :  
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Appearances:

Mr. George F. Graf, Attorney at Law, 300 No. Corporate Drive, #260,  
 Brookfield, WI 53045, appearing on behalf of the Union.  
Mr. Bruno M. Rizzo, Attorney at Law, 800 55th Street, Kenosha, WI 53140,  
 appearing on behalf of the Employer.

ARBITRATION AWARD

The Union and the Employer named above are parties to a 1989-1993 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Patricia Sullivan. The undersigned was appointed and held a hearing on September 23, 1991, in Kenosha, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. The parties made oral arguments in lieu of filing briefs, and the record was closed upon the end of the hearing.

BACKGROUND:

This grievance is over the discharge of Patricia Sullivan. The Grievant started working for the Company in December of 1987 and was discharged on May 29, 1991.

During 1988, the Grievant was absent for illness 17 days. She was given a three-day suspension in August of 1988 for three occurrences of unexcused tardiness. She was tardy one more time that year, in September.

During 1989, the Grievant had an extended absence from March to the middle of August due to an accident at work. The Grievant's back was injured, and the Company put her back to work on light duty.

During 1990, the Grievant was moved from the marble department to the cabinet department. There were weight restrictions on her because of her back injury, and the dust level was greater in the marble department. The Grievant has asthma, a condition aggravated by the dust levels in the Company. In 1990, she was absent for illness 44 days, most of that being an extended illness in late October through most of November. On June 28, 1990, she was given a written warning for three unexcused absences occurring in May and June. Company policy states that: "No employee is to be tardy or absent more than three times during any 60 days or 2 month period. Only a written excuse from a doctor would be considered for an excused absence." The Grievant's other absences during 1990 were excused.

Also during 1990, the Grievant was given a verbal warning in August for verbal abuse to a foreman. Shop superintendent Dan Molgaard did not speak with

the Grievant about the incident. The Grievant did not get along with one particular foreman, and that foreman later stepped down from that position.

In 1991, the Grievant was absent 40 days for illness before being terminated on May 28th. The Grievant had an extended illness starting in March. She came back to work for part of April, and missed all of May. All her absences were excused, and were related to her asthma problem. She was treated at an allergy clinic for bronchial asthma.

On May 29, 1991, Molgaard wrote the following letter of termination:

Your employment record with Laminated Products, Inc., has been unsatisfactory for the reasons that follow:

1. Your excessive absence from work resulting in the missing of 267 days in the last 3 1/2 years (1988 thru May 28, 1991).

A.	1991	40	- through 5/28/91
B.	1990	44	
C.	1989	126	
D.	1988	17	

2. Your lack of willingness to do the jobs assigned to you.

3. You received written disciplinary action for using obscene language towards a foreman on 8/17/90.

4. Your unsatisfactory performance on the job.

Laminated Products, Inc has made every effort to place you on jobs that you could handle. Because you have not shown up for work on a regular or consistent basis, your work habits have not improved, you lacked a spirit of cooperation, and you were unwilling to do the work assigned to you in an orderly and uncomplaining manner, Laminated Products, Inc. has no recourse but to terminate your employment.

Although Molgaard stated that the Grievant showed a lack of "willingness" to do jobs assigned to her, Molgaard testified that he meant that she was unable to do a lot jobs, because of her back problem and the dust in the plant.

Most of the jobs in the plant are physically demanding, and all the jobs involve dust, although some departments, such as the marble department, tend to have more dust than others. The Grievant never refused to do work assigned. However, Molgaard also testified that there were times when the Grievant did not want to perform certain jobs.

Company President Robert Block became aware of the Grievant's work record within six months after she started working there. He noted that in a production facility, it is very disruptive to not have people showing up as it upsets the flow of work. Block did not know whether the Grievant's supervisors ever told her how her absenteeism disrupted work.

The Grievant testified that no one told her that she was unwilling to work, and she did her best. She was not warned that her absenteeism would result in dismissal. Her long absences in 1989 and 1990 were due to her back injury, and her absences in 1991 were connected with her problems with asthma, which she has had for 10 years. Although she will always have asthma, she

hopes to become a productive employee. She felt that her supervisors, especially Dominic and Dan, were helpful in changing job assignments, particularly in getting her off buffing work.

ISSUE:

The parties stipulated that the following issue is to be decided by the Arbitrator:

Was the employee properly discharged for cause? If not, what is the proper remedy?

CONTRACT LANGUAGE:

SENIORITY

. . .

2) Loss of Seniority: Seniority terminates for the following reasons:

- a) The employee quits or retires.
- b) If the employee is discharged for cause, with written notice to the Union.

THE PARTIES' POSITIONS:

The Company asserts that it had cause to discharge the Grievant because she was so continually absent from work. Her attendance record is replete with excessive absences, culminating with an absence due to her asthmatic condition. The Company considers the health of employees to be a serious issue, and has tried to place employees in places where they can perform. Although the Company recognizes that there is a weakness in its procedure as far as progressive

discipline is concerned, it considered this matter not to be disciplinary, and that the Grievant has inherent abilities which prevent her from performing. The Company notes that it cannot maintain production when someone continually does not show up for work.

The Union argues that the Company ignored its own policy of progressive discipline. The Grievant was not warned that she was subject to discharge because she was medically off work. While the Union understands the Company's problem, the Company made no effort to check with doctors or counsel the Grievant or see if accommodations could be made. The Grievant's work record shows that she received proper discipline on tardiness and some one-day absences, and she corrected the problems. While no guarantees can be made, the Grievant should be given a chance. The Union asserts that the Company has not sustained its burden, and there is no cause for discharge.

DISCUSSION:

This is an unfortunate case, as the Grievant's absenteeism appears to be out of her control. If one disregards the accident at work and the absences related to it, one is left largely with the 1991 record of 40 days missed for illness related to asthma, and the 1988 record of 17 days missed for illness. Therefore, disregarding the absences related to the back injury, the Grievant

has no good or solid track record of attendance with the Company.

While the Union has correctly noted that the Company did not follow progressive disciplinary steps, the purpose of progressive discipline is to allow an employee to rehabilitate herself and correct the behavior complained of. There is little the Grievant can do to correct her asthmatic condition, and conditions in the dusty plant tend to aggravate it. Again, this is all the more unfortunate for the Grievant, who would perhaps be a healthier employee working for another employer where conditions do not aggravate her asthma. The Arbitrator recognizes that jobs are not easy to come by, particularly in Kenosha and during a recession.

Nonetheless, arbitrators generally recognize an employer's right to terminate employees to excessive absences even due to illnesses. An employer has the right to expect an employee to come to work with reasonable regularity, and this Company has production needs to be met that burden both the Company and other employees when one employee is often absent. The Company has made some accommodations, both for dusty jobs and weight restrictions. While the Company could have done a better job with progressive disciplinary steps, its failure to do so does not mean that reinstatement would be proper in this case, due to the fact that progressive measures would serve little purpose.

Accordingly, I find that the Company had cause to discharge the Grievant, and the grievance is denied.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 8th day of October, 1991.

By \_\_\_\_\_  
Karen J. Mawhinney, Arbitrator