

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 : Case 8
 TEAMSTERS LOCAL UNION NO. 43 : No. 45662
 : A-4777
 and :
 J.W. PETERS & SONS, INC. :
 :

Appearances:

Mr. George T. Mueller, Secretary-Treasurer, Teamsters Local Union No. 43,
 on behalf of the Union.
Mr. Richard Lewis, Human Resources Manager, J.W. Peters & Sons, Inc., on behalf of the

ARBITRATION AWARD

Teamsters Local Union No. 43, hereinafter the Union, and J.W. Peters & Sons, Inc., hereinafter the Company, jointly requested that the Commission designate a staff arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. 1/ The undersigned was subsequently designated to arbitrate in the dispute. A hearing was held before the undersigned on July 19, 1991 in Burlington, Wisconsin. There was no stenographic transcript made of the hearing and the parties presented oral argument at the close of the hearing. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUE:

The parties stipulated to the following statement of the issue:

Did the Company have just cause to give the Grievant a two and one-half day suspension?

CONTRACT PROVISIONS:

The parties cite the following provision of their 1989-92 Agreement:

ARTICLE 34
DISCHARGE OR SUSPENSION

The Employer may not discharge or suspend any employee who has completed the probationary period, without just cause. For offenses other than those listed below there will be a progressive disciplinary procedure of two written warning notices, a copy shall be given to the employee and the steward. A third offense within a 12 month period may result in discharge or suspension. Warning notices need not be for related offenses. No warning notice need be given before an employee is discharged for:

1. Dishonesty
2. Unauthorized use of Company property.

1/ The parties agreed to waive the thirty-day time limit for issuance of an award.

3. Use or possession of drugs on Company premise except as prescribed by physician.
4. Reporting for work under the influence of intoxicants or drugs not prescribed by a physician.
5. Recklessness resulting in an accident while on duty.
6. Refusal to perform assigned work in his job, provided the assignment does not seriously impair the safety of the employee or employees.
7. Theft on Company property.
8. Provoking a fight.
9. Deliberately damaging or attempting to damage Company property.
10. Possession of weapons or explosives on Company property.
11. Clocking another employee time card or unauthorized alteration of a time card.
12. An employee will be subject to discharge if employment was obtained based on false or misleading information.

Where drinking or working under the influence of alcohol or the use of drugs or being under the influence of drugs is alleged by the employer, the employee shall consent to a prescribed test or tests to determine if the employee is under the influence of such substance. The results of such test shall be conclusive on all parties.

Failure of the employee to consent to such test shall be grounds for discharge without further notice.

In cases of absenteeism or tardiness there shall be a conference with the employee and the steward or his designated representative. If the employee continues to have a problem, a warning notice will be issued.

BACKGROUND:

The Grievant, James Modrak, has been employed by the Company for approximately six years. At the time in question the Grievant was employed at an outside job heating the stone and moving the Tucker unit. He was working sixty to seventy hours per week at the time.

On March 5, 1991, the Grievant started work at 6:00 a.m. and at 7:00 a.m. a safety meeting was called by the Company in the lunch room. Due to the cold temperatures outside the Grievant was wearing a jacket. The safety meeting had speakers and a forty minute filmstrip. The room was crowded for the meeting, with people at the picnic tables in the room and people standing along the walls. The Grievant was seated at a middle picnic table against the wall with the film screen on approximately a forty-five degree angle to the Grievant's right.

There is a dispute as to whether the Grievant was sleeping during the

meeting. The Company asserts that the Grievant was observed by Lewis, the Human Resources Manager, lying across the table sleeping for twenty minutes. Lewis then had him removed from the room. The Grievant asserts he did not feel well and had his head on his arms, but was still watching the filmstrip.

After being removed from the meeting, the Grievant returned to work. After the meeting ended, the Grievant was told to report to Lewis. Lewis informed the Grievant he had been observed sleeping during the meeting, and the Grievant told Lewis he did not feel well and had not been sleeping. The Grievant recalled specific parts of the film to convince Lewis he had not been asleep, and was told that he had remembered the parts from a film he had seen fifteen months prior. Lewis advised the Grievant he was being suspended for two and one-half days without pay.

The Grievant was issued the following letter of suspension, and served the suspension as set forth in the letter:

DATE: March 5, 1991
TO: James Modrak, Clock #1187
FROM: Richard Lewis
RE: Suspension

On Tuesday, March 5, 1991, during the Plant Safety Meeting, you slept with your head on the table for approximately 20 minutes. You were on company time during this period and could be subject to discharge.

Your apparent disregard for the safety material under discussion was not viewed favorably by the writer. As a result you are suspended (without pay) for the balance of 3/5/91, 3/6/91 and 3/7/91. You are to report back to work on Friday, March 8, 1991 at your normal starting time.

Any recurrence or similar display of an attitude problem will bring about discharge.

Richard K. Lewis /s/
Richard K. Lewis
Human Resource Manager

RKL/slh

cc: G. Mueller
K. Baumeister
Cretex
C. Jacobson
G. Hubbard
J. Nanna

Attending meeting besides subject were Ken Baumeister (Union Steward), Cliff Jacobson and the writer. Time

of meeting was 9:45 AM. The man's attitude was not positive during the meeting.

RKL /s/

I, Cliff Jacobson, agreed with the above statement.

Cliff Jacobson /s/

The suspension was grieved, and the parties, being unable to resolve their dispute, proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES:

Company:

In its summation, the Company asserts that Article 34, Discharge or Suspension, paragraph 1, of the Agreement, provides that it may suspend an employe for just cause. The Grievant was observed sprawled over a table for twenty minutes during the safety meeting. If he did not feel well, he should have excused himself from the meeting instead of making a mockery of the safety meeting. Furthermore, the Grievant did not tell anyone he did not feel well until he was called into Lewis' office approximately one hour later.

Union:

The Union asserts that Article 34, Discharge or Suspension, requires that progressive discipline be followed, and provides that there first be two written reprimands and that there must be a third offense in a twelve-month period in order to result in a suspension. The Union notes that there is no mention of Article 34 or any prior discipline in the letter of suspension issued to the Grievant.

As a remedy, the Union requests that the Grievant be made whole for the two days of March 6 and 7, but notes that the Grievant is not requesting any pay for the balance of March 5 due to his being ill that day.

DISCUSSION:

The wording of Article 34, Discharge or Suspension, is clear and unambiguous. Other than for the listed reasons for immediate discharge, the Company is required to follow progressive discipline with at least two written warnings before a suspension may be imposed for a third offense within a twelve-month period. There is no evidence whatsoever of any prior discipline of the Grievant within a twelve-month period from the date of the suspension, and the alleged offense is not within the twelve listed types of offenses that are exempted from the progressive discipline requirement. Therefore, by the parties' agreement in Article 34, without the prior written warnings, the Grievant's offense, even if proved, does not constitute just cause for suspension.

Based on the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is sustained. The Company is directed to make the Grievant whole for the two days of pay lost due to his being suspended on March 6 and 7, 1991.

Dated at Madison, Wisconsin this 24th day of October, 1991.

By _____
David E. Shaw, Arbitrator