BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS UNION LOCAL NO. 695	Case 3 No. 47048 A-4884
and	
SILGAN CONTAINERS CORPORATION	

Appearances:
Mr. John Knoebel, Secretary-Treasurer, Teamsters Union Local No. 695, appear
Foley & Lardner, Attorneys at Law, by Mr. Karl Dahlen, appearing on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and Company or Employer respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing was held on May 14, 1992 in Menomonee Falls, Wisconsin. The hearing was not transcribed. Afterwards, the parties filed briefs, whereupon the record was closed July 15, 1992. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

> Did the Company violate the agreement when it suspended the grievant on July 8, 1991? If so, what is the remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1991-93 collective bargaining agreement contains the following pertinent provisions:

> ARTICLE 6 DISCHARGE PROCEDURE
>
> 6.1 No employee shall be discharged or suspended except for dishonesty, drunkenness, being under the influence of or in possession of illegal drugs, or the illegal use of dangerous drugs, or other just cause. At least one (1) warning notice shall be given in writing to the Union and to the employee before discharge or suspension can be made except in cases of dishonesty, drunkenness, being under the influence of or in possession of illegal drugs, or the illegal use of dangerous drugs, or other serious offenses as calling for no advance notice of discharge. The first such warning notice shall be effective for a period of ninety (90) days. Any succeeding warning notice given to an employee for the same or similar offense shall be effective for a

period of twelve (12) months. Discharges are to be discussed in advance with the Union Committee, if available.

. . .

ARTICLE 10 LEAVE OF ABSENCE

10.1 Reasonable leave of absence shall be granted to any employee for justifiable reason. . .

PERTINENT COMPANY WORK RULES

. . .

REGULATIONS:

For the reasons above, these violations cannot be tolerated:

. . .

5. Insubordination (including refusal or failure to perform work duty assigned). . .

. . .

11. Absence from duty without notice to, and permission from, a supervisor, the plant superintendent or plant manager.

FACTS

The Company is a manufacturer of containers for the food industry. At its Menomonee Falls facility, the Company produces metal cans for customers such as Nestles and Pillsbury.

About 3 p.m. on Wednesday, June 26, 1991, 1/ Plant Superintendent Joe Molle was approached by James Lortie, a "coater/feeder" on the second shift. Lortie told Molle that he needed a leave of absence for the following day (Thursday, June 27) and that if he did not get one, he was going to take off anyway. Molle, who handles personnel matters at the plant, told Lortie that he did not have time to talk right then, but that he would talk to him later in the day about the leave request.

Several hours later, Lortie again approached Molle and asked to be excused from work the next day. When Molle inquired as to why Lortie needed the time off, Lortie stated that he needed to attend a legal hearing which involved his deceased mother's estate the following day at 4 p.m. Molle asked why Lortie had not informed him about this meeting earlier, whereupon Lortie responded that the meeting had been arranged on short notice because of a change in the attorney's schedule. Molle informed Lortie that the plant in general, and Lortie's department in particular, was short-handed due to vacations so he would not grant Lortie a vacation day. Molle then went on to say that Lortie could nevertheless have an authorized/excused absence (for the day) if he verified the reason for the leave request by supplying him with the name and telephone number of the attorney involved so that Molle could confirm Lortie's story. Lortie responded that he could not remember the attorney's

1/ All dates hereinafter refer to 1991.

name. Molle then told Lortie he was to call the plant after he got off work that night and provide the third shift supervisor with the requested information. Prior to leaving for the day, Molle spoke with Lortie's second shift supervisor, Tim Durth, and told Durth to remind Lortie at the end of the shift that Lortie was to find the lawyer's name and telephone number when he went home that night and call the third shift supervisor with this information.

At the end of the shift, Durth reminded Lortie that he was to supply the requested information. Lortie responded to this reminder by saying that he was not going to provide the requested information because, in his words, it was bullshit and Molle was digging too deep into his personal life. Lortie then said that he was not going to be present at work the next day. Durth responded that if he (Lortie) was absent, his absence would be unauthorized.

When Molle came in to work the next day (Thursday, June 27) third shift supervisor Tom Fitzgerald told Molle that Lortie did not call in with the attorney's name and telephone number as requested. Fitzgerald further told Molle that when Durth had reminded Lortie at the end of the second shift to phone in with the requested information, Lortie had said that it (i.e. supplying the requested information) wasn't worth the hassle and that he was going to take the day off anyway because his attendance record was such that he could absorb an absence.

After hearing this, Molle called Lortie's home about 7:45 a.m. Molle reached Lortie's daughter, who informed Molle that neither Lortie nor his wife was home. Molle left a message with Lortie's daughter that it was imperative for Lortie or his wife (who also works for the Company) to call work immediately. Molle did not receive a callback as requested. About 9:30 a.m. Molle again called Lortie's home, and Lortie's daughter again told Molle that neither her father nor mother was home, whereupon Molle left another message for Lortie to return his call. Lortie never returned Molle's call that day. Additionally, Lortie did not report to work that day. As a result of Lortie's absence, Molle was forced to schedule employes from the first and third shifts to perform Lortie's duties on an overtime basis. No management official ever authorized Lortie's absence on June 27.

On Lortie's next scheduled workday (Monday, July 1), Molle called Lortie and Union Committeeman Stan Kaczor into his office and asked Lortie why he had not called in with the attorney's name and telephone number as requested. Lortie responded by saying that the Company did not run his life and he saw no need to provide the requested information. Lortie also stated that in his view, Molle had no right to request that information because other supervisors had not requested such information before. Molle, in turn, told Lortie that the reason he had insisted on the verification was that the Company had lacked the personnel necessary to cover Lortie's requested absence without paying for overtime, and therefore he wanted to assure the legitimacy of the absence before the Company would incur the added overtime expense. Molle also told Lortie that the suddenness of his leave request gave Molle some doubts as to the veracity of his (Lortie's) claim. Upon hearing this, Lortie became irate and yelled at Molle, who responded by telling Lortie to leave the office, which he did. A half hour later, Lortie returned to Molle's office and apologized to Molle for his earlier outburst. Molle then told Lortie that he would not grant Lortie a vacation day for June 27, but that if he were to provide the requested information (i.e. the name and telephone number of the attorney), his absence on that day would be considered excused. Lortie again refused however to provide Molle with the requested information.

Several days later, Molle met with Plant Manager Frank Clines regarding Lortie's absence on Thursday, June 27. Molle and Clines determined that Lortie's conduct on that day was dishonest and also violated Company work rules

concerning insubordination and unauthorized absences, and that a 2-day suspension was in order. The following week, Molle and Clines met with Lortie and other Union representatives. At that time, Molle offered Lortie one last opportunity to verify the reason for his absence on Thursday, June 27, but Lortie again refused. The Company thereupon suspended Lortie for 2 days, specifically July 9 and 10. Lortie grieved the suspension and the matter was appealed to arbitration.

Insofar as the record shows, Lortie did not have any written warnings in effect at the time he was suspended.

The record indicates that when the Company has sufficient workers available to cover absences without assigning overtime, it usually grants employe leave requests without requiring any kind of verification or insisting on proof of the need for leave.

POSITIONS OF THE PARTIES

The Union takes the position that the Company did not have just cause to suspend Lortie for his conduct herein. In the Union's view, Lortie's conduct was not dishonest as claimed by the Company. According to the Union, the Company completely ignores the conversation Lortie had with Tim Durth on June 26 wherein Lortie informed Durth that he intended to take the following day off as an unexcused absence. The Union submits that this conversation put the Company on notice that Lortie was not going to be at work the next day (June 27). The Union also notes that at no time during this conversation did Durth ever tell Lortie that he would be disciplined if he did not come in the following day or supply the attorney's name as requested. The Union therefore contends that the Company's attempt to bootstrap its case on the back of a dishonesty claim falls short of its goal. The Union argues in the alternative that if the Arbitrator finds that some measure of discipline was warranted for the conduct in question, the discipline imposed here (i.e. a 2-day suspension) was inappropriate. In support of this premise, the Union relies on the progressive discipline language contained in Article VI of the contract and the fact that Lortie had no warning letters in effect when he was suspended. The Union therefore asks that the grievance be granted, the discipline overturned and the grievant made whole for his losses.

The Company takes the position that it had just cause to suspend the grievant for the conduct in question. According to the Company, Lortie attempted to manufacture an excuse for his June 27 leave request and, when asked to supply certain information to verify the request, took the day off anyway in open insubordination of Molle's instructions. In the Company's view, Lortie's conduct warranted a 2-day suspension. In fact, as the Company sees it, Lortie's conduct would have also supported his discharge had the Company exercised that option. The Company argues that the Union's claim that it had no right to insist that Lortie justify the reason for his leave cannot excuse Lortie's misconduct for the following reasons. First, according to the Company, any past practice or alleged waiver cannot overcome the contractual leave of absence, arbitration and integration clauses (Sections 10.1, 31.3 and 33.1 respectively). Second, the Company argues that the Union has failed to even establish a binding past practice covering circumstances similar to those at issue here. Third, the Company argues that the grievant waived his right to challenge the Company's insistence that he prove the need for his sought-after one day leave by violating the well-established rule of "obey now - grieve later." The Company also argues that the penalty imposed on Lortie was entirely appropriate under the circumstances and should be sustained. In its view, a two-day suspension was not too severe. The Employer therefore requests that the grievance be denied and the penalty upheld.

DISCUSSION

Article 6.1 governs the stipulated issue and requires that the Employer have just cause to suspend the grievant. The elements to a just cause analysis have been variously stated. In my opinion, where the agreement does not specify the standards and where the parties have not otherwise stipulated to them, the just cause analysis must address two elements. The first is that the Employer demonstrate the misconduct of the grievant and the second, assuming this showing is made, is that the Employer establish that the penalty imposed was contractually appropriate.

As noted above, the first component of a just cause analysis requires a demonstration of the grievant's misconduct. What happened here was that on June 26, the grievant asked to be excused from work the next day. His stated reason for being absent was that he was going to attend a legal hearing concerning his mother's estate. The Plant Superintendent told the grievant he could not have a vacation day because a large number of people in the plant were already gone, but that he could have an authorized/excused absence (for the day) if he verified the need for it by providing the name and phone number of the attorney involved. The grievant later decided not to supply the requested information. He told his supervisor that night that he would not be supplying the requested information and that he would not be coming to work the next day. The supervisor, in turn, responded that if the grievant did not report to work, his absence would be unauthorized. The next day, June 27, Molle called the grievant's house twice, but he was not home. Molle left messages for Lortie to return his calls, but he never did. Lortie did not report for work on June 27.

The Company characterizes the grievant's above-noted conduct as being dishonest and violative of two Company work rules, specifically those covering insubordination and being absent without permission. These contentions are addressed below in inverse order.

One charge leveled against the grievant is that he violated Company work rule #11. That rule provides that employes are not to be absent from work without notice to, and permission from, a supervisor. In this case, the grievant certainly gave advance notice to a supervisor (namely Durth) that he was going to be absent the next day (June 27). However, in and of itself that is not enough. What also has to happen is that management has to grant the employe permission to be absent. That never happened here. To the contrary, Durth made it clear to the grievant that if he was absent on June 27, his absence would be considered unauthorized. That being the case, the grievant never received permission to be absent on June 27. Since he was, in fact, absent from work that day without permission, it stands to reason that he violated Company work rule #11.

Another charge leveled against the grievant is that he violated Company work rule #5. That rule provides that employes are not to be insubordinate. "Insubordination" is defined in Roberts' Dictionary of Industrial Relations as, among other things, "a worker's refusal or failure to obey, a management directive." In this instance, the grievant was asked to do something several times, specifically, to provide certain information to Molle, and he expressly refused to comply with that directive. It is a cardinal rule in the workplace that employes are to obey supervisory orders and do what they are told regardless of whether or not they agree with it. The reason for this is obvious; there can hardly be a more serious challenge to supervisory authority, and hence to the employer's ability to direct the work force, than the refusal to obey a supervisory order. If the employer gives a work directive and an employe fails to comply, the employer then has a legitimate beef with that employe. When an employe believes a work order is improper, the proper course

of action is for the employe to nevertheless still obey the order and obtain redress through the grievance procedure. Said another way, they are to obey first and grieve later. Thus, absent a safety issue or mitigating factor, employes are to obey supervisory orders and do what they are told. If they do not, they can be disciplined or discharged for same.

Having set forth the foregoing principle, attention is turned to the reason the grievant did not comply with Molle's directive and supply the requested information. The grievant made it emphatically clear that he believed the Company did not have the right to require that he verify his need for time off. In other words, he thought he had the right not to verify his reason for a leave of absence, even after he had been asked to do so. However, on this point the grievant was just plain wrong because the contract gives the Employer the right to require any employe to justify his or her request for a leave of absence. Article 10.1 of the contract provides that a "reasonable leave of absence shall be granted to any employee for justifiable reason." Obviously, it is the Employer that determines whether a "justifiable reason" exists. Here, Molle directed that the grievant supply him with certain information, specifically the attorney's name and telephone number, so that Molle could call the attorney to verify whether a "justifiable reason" existed for the grievant's absence on June 27. Given this contract language, the Company was within its contractual rights when it insisted that the grievant provide information supporting his request for a leave of absence.

The Union contends that notwithstanding the above-noted contract language, a "practice" exists which absolves employes of the need to provide a "justifiable reason" for their leave requests. According to the Union, the Company's "practice" is to usually grant leave requests without requiring any kind of verification. The problem with this characterization of the Employer's "practice" however is that it only states part of the "practice". The other part, which the Union conveniently overlooks, is that when the Employer grants such leave requests, it (i.e. the Employer) has sufficient workers available to cover the employe's absence without paying overtime. In this instance, Molle's stated reason for not granting the grievant his requested leave was that the Company was short-handed at the time due to vacations. There is nothing in the record which would cause the undersigned to conclude otherwise. Additionally, insofar as the record shows, the Company has not waived its right to verify leave requests when it is short-handed. Since the Company was short-handed on June 27, the Union has not demonstrated that the Employer's "practice" is applicable to the situation that existed on that date.

In light of the foregoing then, it is held that no valid reason exists for the grievant's refusal to comply with Molle's directive. Since he should have obeyed Molle's order and he did not, it follows that he violated Company work rule #5.

The remaining charge leveled against the grievant is that the actions relative to his absence were dishonest. According to the Company, the reason offered by the grievant to support the request for a one-day leave of absence on June 27 (i.e. a legal hearing concerning his mother's estate) was an out-and-out lie. The Company asserts that the real reason the grievant was absent June 27 was that he left that day for a four-day trip to Michigan.

The analysis on this point begins with the premise that if the grievant offered a reason for his planned absence on June 27 that was not the real reason he was going to be absent that day, then that would obviously be dishonest.

It may well be, as alleged by the Company, that the grievant was not at a legal hearing on June 27, but rather went on a trip that day to Michigan. Be

that as it may, the record evidence does not support that conclusion. On this critical point, the record does not indicate that the grievant went to Michigan on June 27. All the record shows is that the grievant was not at home in the morning when Molle called, did not return Molle's call and did not provide the attorney's name and phone number as requested. Certainly the circumstances just cited make the grievant's absence on June 27 appear suspicious. However, suspicious circumstances alone are not sufficient, in the context of this case, to prove dishonesty. Instead, actual proof is required. The undersigned finds that actual proof of dishonesty is lacking here, since there is nothing in the record which conclusively contradicts the grievant's original assertion that the reason he was going to be absent June 27 was because of a legal hearing. The undersigned therefore has no basis for finding that the grievant's stated reason for his absence June 27 was dishonest.

In summary then, it is held that the dishonesty charge against the grievant has not been substantiated, while the other two charges alleging work rule violations have been. The grievant engaged in misconduct and committed a disciplinable act by violating work rules 5 and 11. The Company therefore had just cause to discipline him for same.

The second component of a just cause analysis requires that the employer establish that the penalty imposed be contractually appropriate. Said another way, the punishment must fit the crime. The Employer argues that its suspension of the grievant meets this burden. I disagree. As a practical matter, my previous finding dismissing the dishonesty charge against the grievant means that the Company could not categorize the grievant's misconduct here as being one of the so-called cardinal offenses listed in Article 6.1 (i.e. dishonesty) which justify suspension or discharge without a prior written warning. Thus, under the progressive discipline system established in Article 6.1, the grievant had to have a written warning in effect in order to justify a suspension for his misconduct here. Insofar as the record shows, the grievant did not have any written warnings in effect at the time he was suspended. That being the case, the next step under the disciplinary sequence found in Article 6.1 was a written warning. Since the Company skipped this step and proceeded instead to a suspension, it failed to comply with the disciplinary sequence it has contracted to abide by. In so finding, the undersigned is well aware that the grievant's misconduct here could be characterized as serious. Nevertheless, there is nothing in Article 6.1 that provides that violations of work rules, even serious violations, warrant an automatic suspension or discharge. Consequently, the grievant's suspension is overturned and his discipline is reduced from a two-day suspension to a written reprimand.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

The Company violated the agreement when it suspended the grievant on July 8, 1991. It is held that the appropriate measure of discipline was a written reprimand. The Company shall reduce the suspension to a letter of reprimand for violating work rules 5 and 11 and shall reimburse the grievant for any losses flowing from the suspension.

Dated at Madison, Wisconsin this 13th day of October, 1992.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator

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