

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 SHEET METAL WORKERS' INTERNATIONAL :
 ASSOCIATION LOCAL 565 : Case 66
 : No. 47667
 and : A-4944
 :
 SUB-ZERO FREEZER COMPANY, INC. :
 :

Appearances:

Mr. Paul Lund, Business Manager and Financial Secretary, Local Union No. 565,
 Sheet Metal Workers' International Association, appearing for the
 Union.
Mr. Donald D. Emerich, Personnel Director, Sub-Zero Freezer Company, Inc.,
 appearing for the Company.

ARBITRATION AWARD

The Sheet Metal Workers' International Association, Local Union No. 565,
 herein the Union, and Sub-Zero Freezer Company, herein the Company, jointly
 requested the Wisconsin Employment Relations Commission to designate the
 undersigned as the arbitrator to hear and decide a dispute between the parties.
 The undersigned was so designated. Hearing was held in Madison, Wisconsin on
 September 15, 1992. A transcript of the hearing was not made. The parties
 completed the filing of post-hearing briefs on September 29, 1992.

ISSUE

The parties stipulated to the following issue:

Were the incentive rate changes made by the Company in
 serial tag elements on models 511 and 550 in
 conformance with the terms of the contract? If not,
 what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE XVII

ADJUSTMENT OF GRIEVANCE

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Section 3. In any grievance or dispute where it is
 determined in arbitration that the award shall be
 applied retroactively, the period of retroactivity
 shall be no more than ninety (90) calendar days at
 straight

time base rate. The arbitrator shall render a decision to
 the parties within ninety (90) days from the date of
 the arbitration hearing.

. . .

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.

. . .

ARTICLE XVIII

INCENTIVE PLAN

Section 1. The SUB-ZERO INCENTIVE PLAN is hereby incorporated into this Agreement as hereinafter attached.

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SUB ZERO INCENTIVE PLAN

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B. PROCEDURES FOR CHANGING STANDARDS

Section 1. A standard once established shall not be changed except as provided herein and except in case where the Company makes a change in the materials, tools, machines, methods or design of an operation or unless it is found through investigation that there is a clerical error, or an error in computation. A standard once established shall not be changed merely because of a change in any symbol or number of any materials tools, machines, or operations.....

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BACKGROUND

The grievant, Tom Hefty, is assigned to the crating operation on one of the assembly lines for producing full-size refrigerators and freezers. Hefty performs the final work on each unit before it is moved to the warehouse, which works includes enclosing and securing the unit in a heavy, reinforced cardboard carton. The work is among the most physically demanding work in the plant. Hefty is paid on a piece-rate incentive basis.

On May 28, 1992, 1/ Hefty filed a grievance over the new time values for two elements on models 511 and 550.

A study dated August 21, 1986, of the work performed on Model 550 at the position now held by Hefty, which study was detailed on a memory sheet dated April 20, 1988, described the elements as follows: "Get yellow tag, tear apart, pos card to bench" with a time value of .298; and, "wet yellow tag, pos yellow tag to carton" with a time value of .385. The combined value of the two elements was .683. The same value of .683 for the same two elements was applied to Model 511 beginning in January of 1988.

Since June of 1982 and until March of 1992, a combined value of .255 for the two elements had been used on all models, other than 511 and 550.

In early 1992, the model/serial number tag was altered. The color of the tag was changed from yellow to white and the new tag changed to a self-sticking adhesive with a peel-off paper backing from a wettable gummed backing. At approximately the same time, the Company conducted time studies on a new model, i.e., Model 590. On March 3, 1992, the Company changed the value of the two elements on Models 511 and 550 from .683 to .296.

On April 8, 1992, an industrial engineer, Jim Motelet, conducted a simulated check study of Hefty performing the two serial tag elements, which resulted in values of .136 and .228 for the two elements. On April 9, 1992, the Company implemented the .136 value, but not the .228 value, which increased the combined value of the two elements from .296 to .311.

On May 18, 1992, Motelet conducted another check study of Hefty performing his complete duties on fifteen units of Model 550. This study resulted in a value of .220 for the first of the tag elements, but on the second of the tag elements Motelet incorporated a part of the work of picking up and positioning the tube over the unit. Thus, the resulting time for the second tag element could not be compared to previous time values for the second tag element performed alone. This study did not result in any further increases by the Company in the element time values for the 511 and 550 models.

On June 15, 1992, the Company increased the combined elemental time value from .311 to .380. The Company's explanation for said increase was that it was made in an attempt to resolve the grievance.

POSITIONS OF THE PARTIES

Union

The Company's documentation for the .255 minutes/piece tag element rate lacks credibility. At the hearing the Company introduced a chart dated May 17, 1982, which showed that the .255 rate was reached by averaging the individual study times from seven older models. The Union had not seen said chart previously. Further, it is clear that the change in the tag element total time

1/ Unless otherwise specified, all other dates herein refer to 1992.

for the 511 and 550 models from .683 to .296 in March of 1992, was based solely on the time study of the 590 model, rather than on an average of studied times as was done for older models.

In June of 1992, the Company made further adjustments in the tag element rates. Such changes prejudice the Company's position that the initial rate changes were necessary because of a clerical error in setting the initial rates.

At the third step grievance meeting, the Company did not claim that the rates in question were the result of a clerical error. Rather, the Company contended that the rates were temporary, so the Company could conduct a new study to set permanent rates.

The Union contends that the changes in the incentive rate for Models 511 and 550 were not made in conformance to the contract. Accordingly, the first element should remain at .298 minutes/piece and the second element may be changed, because of the change in its design of adhesive application, but the change cannot be less than 75% of the original studied time, i.e., .289 minutes/piece. The grievant should be made whole for all loss of earnings which resulted from the improper rates.

Company

As a result of a clerical error, the time value for the serial tag element on Models 511 and 550 was set incorrectly at .683 on June 17, 1987. Prior to that date, all models had serial tag element times of .255, which value was an average of times for all models. Nothing had changed in the serial tag element as of June 17, 1987. The other models kept the correct time value.

In March of 1992, the Company discovered the error when a new serial model tag was introduced. A temporary rate of .296 was set for all models on March 3, 1992. The serial tag element was restudied to set permanent rates and was changed to .311 on April 9, 1992. The rate was increased to .380 on June 15, 1992, in an attempt to resolve the grievance.

The grievant benefited from the error for almost five years. However, the Company is not seeking reimbursement from the grievant. The changes in the serial tag elements were in conformance with the contract. Therefore, the grievance should be denied.

DISCUSSION

The Union does create some doubts with respect to the Company's explanation as to how the rate of .255 was developed in 1982. Regardless of the way in which the rate of .255 was created, the rate apparently was applied to several models for a number of years, including some of the models in the 500 series.

There is nothing in the record to show that any change in materials or methods of the tag operations had occurred in 1986 or 1987 which would justify a change in the time values of those operations from the .255 value then in use for all existing models to the .683 value which was applied to Models 511 and

550. The absence of any change is the basis of the Company's contention that the implementation of the .683 value was an error, which the contract allows to be corrected upon its discovery. This contention is supported by the fact that the .683 value was not implemented for all models.

In the absence of a showing that there is a difference between the various models in the methods or materials used in performing the elements at issue herein, it is reasonable for the Company to use a common time value for those elements regardless of which model is being produced. The Company has utilized such an approach since March of 1992. Even though that use of a common time value resulted in a lower value for models 511 and 550 than had been in use, the lower value was appropriate since the higher value being used was set in error.

Once it is concluded that the .683 value was an error, it follows that the Company had the contractual right to correct the error. Such is true even if there were only minor changes in the materials and/or operational methods for the relevant elements.

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

AWARD

That the incentive rate changes made by the Company in serial tag elements on Models 511 and 550 were in conformance with the terms of the contract; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 21st day of December, 1992.

By _____
Douglas V. Knudson, Arbitrator