

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
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 FOX VALLEY LOCAL 77-P : Case 4
 GRAPHIC COMMUNICATIONS : No. 48598
 INTERNATIONAL UNION : A-5022
 :
 and :
 :
 MIDWEST RUBBER PLATE CO., INC. :
 :

Appearances:

Mr. Gerald Cartwright, International Representative, Graphic Communications International Union, AFL-CIO, 15700 Griffon Court, Apple Valley, Minnesota 55124-7168, for the Union.
 Godfrey & Kahn, S.C. P.O. Box 1278, Oshkosh, Wisconsin 54902, by Mr. James Macy, for the Company.

ARBITRATION AWARD

Fox Valley Local 77-P, Graphic Communications International Union (the Union), and Midwest Rubber Plate Company, (the Company), are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Appleton, Wisconsin on March 17, 1993. No transcript was taken. At the completion of the presentation of evidence, the parties made oral arguments and requested that the arbitrator issue an expedited award.

EXPEDITED ARBITRATION AWARD

Pursuant to the parties' request, the arbitrator has framed the issue:

Did the Company have cause to issue a two-week suspension to Grievant J.G. on July 31, 1992? If not, what is the appropriate remedy?

EXPEDITED ARBITRATION AWARD

FACTS

Grievant has been employed at Midwest Rubber Plate (herein, the Company), for five years. On January 10, 1981, after the members of his department requested a meeting with President John Shreve to complain about his work habits, especially those actions which seemed intended to irritate his co-workers, he received a written warning. The written warning referenced an earlier discussion Shreve had held with Grievant regarding similar conduct.

On April 16, 1992, Grievant and fellow employe B.S. had an encounter with B.H., who is contracted to clean the offices and non-production areas of the building that houses both the Company and another manufacturing firm. While she was cleaning the area around the vending machines, Grievant and B.S. dropped paper wrappers and food on the floor. B.H. complained of their making a mess and told them they should not be there since it was not yet their break time. Grievant said to B.H. "Are you on the fucking rag?" "You're a fucking

bitch," and "It's not your fucking business." Grievant was issued a warning letter for that incident and another in earlier in the month when grievant had carved " ___ is gay" into a piece of rubber left at a co-worker's work station.

In conjunction with the April 23, 1992 warning letter, a meeting was held with Grievant, B.S., Production Manager Burton Rosenthal, and Union Stewards Thomas Snyder and Clayton Poquette. At that meeting Grievant was told to avoid all contact with B.H. Ignoring that directive, Grievant continued to harass and mock B.H. by saying "Hi, B__" and "Bye, B__" inappropriately and making animal noises directed at her.

On June 29, 1992 as B.H. was talking to the shipping manager, Grievant approached her and stood directly behind her, for no justifiable reason, for he did not speak to the shipping manager before leaving.

On July 22, 1992, as H.B. passed Grievant, he said to a co-worker, "Yes, she is nothing but a fucking bitch."

On July 27, as B.H. was telling Grievant to leave her alone, he mocked her by saying over and over, "Hi, B__," "Bye, B__." On July 31, 1992 Shreve issued Grievant a two week suspension. The disciplinary letter noted the June 29, July 22, and July 27 incidents as well as Grievant's ignoring of the April 23 order to avoid B.H. completely.

The Union grieved the suspension, arguing that it violated the contractual requirement that discipline be imposed only for cause, pursuant to Article XI. The grievance remained unresolved throughout the grievance procedure and is the subject of this expedited award.

DISCUSSION

The background recited above reflects a finding that B.H. is more credible than Grievant. This arbitrator came to that conclusion in light of testimony showing that on two occasions, first to Shreve, and then in a meeting including Rosenthal, Grievant first denied and then admitted using abusive language to B.H. on April 16. Additionally Grievant's statement that his steward did not inform him of his right to grieve the April 23 warning letter was contradicted by the steward's testimony, further indicating Grievant's carelessness about the truth. Finally, this arbitrator infers that Grievant would not have accepted the warning letter of April 23 if he believed it was based on erroneous facts, and B.H. would not have subjected herself to the unpleasantness of the events, including a hearing, resulting from her efforts to rectify the situation unless the abusive language had been spoken. The Union argued that there were no other eye witnesses to the April 16 incident. Lack of corroborating evidence, however, does not demonstrate that the alleged incident did not happen.

Grievant's conduct involved abusive language, over-bearing physical approach, and intimidating derision. As for the abusive language, it is clear that such verbal assaults are beyond the bounds of decency. Indeed, Grievant's own attempts to deny that he made such statements imply his own acknowledgement that such verbal assault was wrong.

As to the incident of standing directly behind H.B. as she spoke to the shipping manager, Grievant was clearly placing himself in an intimidating position. It does not take a social psychologist to know it is intimidating to stand closer to a person than social norms allow. The expression "in your face," used to describe an aggressive person, reflects the sense of violation felt when personal space is invaded. The sense of violation increases if the offending person is directly behind the subject and is a person of the opposite

sex whose attention is unwanted. Again, Grievant's recognition that this conduct was wrong was implicitly acknowledged by his attempt to excuse his presence not by calling it harmless, but by saying he had to talk to the shipping manager. This excuse fails however, for the fact of the matter is that he walked away without ever talking to the shipping manager.

The third area of misconduct was the constant, derisive "Hi, B__," "Bye, B__" and the animal noises. Words that in another context would be friendly greetings and farewells became jeering taunts when spoken not to greet, but to irritate, and in one instance, to drown out her request to be left alone. Likewise, the animal noises that in most other contexts would be either harmless or just silly, in the totality of this situation became harassment. 1/

Equally significant as the misconduct of the Grievant's harassment is his insubordination. Shreve had exercised his right to demand the Company be free from intimidation and harassment. Shreve clearly communicated to Grievant, both personally and through written warnings, that he should have no contact with H.B. In direct defiance of that order, Grievant continued to indulge his own impulses and grudges, thereby violating other employees' right to go about their work in peace.

Given the gravity of Grievant's misconduct and the Company's earlier efforts to correct that misconduct through less drastic means, the undersigned concludes the Company had cause to impose the two-week suspension.

In the light of the record and the above discussion, this arbitrator issues the following

AWARD

1. The Company had cause to issue a two-week suspension to Grievant J.G. on July 31, 1992.

2. The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 19th day of March, 1993.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator

1/ At the hearing, there was some discussion of what constituted sexual harassment under the state statutes. Although a statutory interpretation is irrelevant to this proceeding, which is governed by the parties' collective bargaining agreement, it is worthy of note that the agent of the Equal Rights Division was most likely misquoted as to the legal standard for sexual harassment.

