

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 VILLAGE OF GERMANTOWN : Case 26
 (HIGHWAY DEPARTMENT) : No. 47946
 : MA-7444
 and :
 :
 GERMANTOWN MUNICIPAL EMPLOYEES UNION, :
 LOCAL 3024, AFSCME, AFL-CIO :
 :

Appearances:

Mr. Victor Musial, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, N114 W15938, Sylvan Circle, #208, Germantown, Wisconsin 53022, appearing on behalf of the Union.
 Godfrey & Kahn, S.C., by Mr. Paul C. Hemmer, 605 North Eighth Street, P.O. Box 1287, Sheboygan, Wisconsin 53082-1287, appearing on behalf of the Employer.

ARBITRATION AWARD

The Village of Germantown (Highway Department), hereinafter referred to as the Employer, and the Germantown Municipal Employees Union, Local 3024, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for grievance arbitration the undersigned was appointed by the Wisconsin Employment Relations Commission to arbitrate a dispute over the disciplining of an employe. Hearing on the matter was held in Germantown, Wisconsin on November 2, 1992. Post hearing arguments were received by the undersigned by January 11, 1993. Full consideration has been given to the testimony, evidence and arguments presented in rendering this award.

ISSUE

During the course of the hearing the parties agreed upon the following issue:

"Did the Employer have just cause on February 11, 1992 to give the grievant a written reprimand?"

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 2 - Management Rights

2.01 Rights: The Board possesses the sole right to operate the Village and all management rights repose in it, subject only to the provisions of this contract and applicable laws. These rights include, but are not limited to the following:

. . .

D. To suspend, demote, discharge,

or take other disciplinary
action against employees for
just cause; . . .

BACKGROUND

Amongst its various governmental functions the Employer operates a Public Works Department. The Employer and the Union have been parties to a series of collective bargaining agreements. On February 11, 1992 Gaylord Solchenberger, hereinafter referred to as the grievant, was issued the following written reprimand for his conduct on February 6, 1992:

-MEMORANDUM-

TO: Gaylord Solchenberger
FROM: Lloyd Turner, Director of Public Works
DATE: February 11, 1992
SUBJECT: Gaylord Solchenberger
Highway Department Operator

On February 6, 1992, at approximately 11:00 a.m. Highway Superintendent Vic Frenz was in the main garage and observed that Gaylord Solchenberger was talking to Tom Kucharski. Tom was busy working and after observing for a period of time, Superintendent Frenz asked Tom if he needed some help with the project he was on. Tom's reply was no he did not need any assistance. Superintendent Frenz asked Gaylord why he was there talking to Tom and not working on the projects that were assigned to him on that day. Gaylord's response was that he had come in to ask Tom where the loader was. Superintendent Frenz then instructed Gaylord to go out and proceed with the projects that had been assigned to him. Gaylord walked up to Superintendent Frenz, pointing his finger on his chest and asked "Do you have a problem buddy?" Superintendent Frenz then instructed Gaylord again to go out and do the projects that had been given to him to be performed that day. Superintendent Frenz then started walking away and Gaylord went around Superintendent Frenz and came up to him saying "What's your problem? Do you have a problem?". Superintendent Frenz responded "No Gaylord, the only problem is you not doing your job." Superintendent Frenz again turned to leave and again Gaylord approached him and asked "What's your problem?". And, one more time, Superintendent Frenz told Gaylord to go outside right now and get on the list of projects that he had asked him to do. Superintendent Frenz turned and walked away and that was the end of the encounter.

On all jobs, there are supervisors and there are employees that answer directly to these supervisors. There are certain relationships between the supervisors and employees that must be adhered to. The supervisor has certain projects which must be worked on and completed and must assign employees to do this work.

There are certain actions, attitudes and conduct that must be followed. I find that the actions of Gaylord Solchenberger are totally disrespectful to his supervisor and that his conduct was totally improper.

Actions like this from employees to their supervisors cannot and will not be tolerated. This memo will be placed in Gaylord's personnel file and should this kind of improper and disrespectful conduct occur again, more severe action will be taken which may include suspension or dismissal.

cc: Personnel File

The grievant grieved the Employer's actions and the matter was processed to arbitration in accordance with the parties' grievance procedure. During the morning of February 6, 1992 the grievant's supervisor, Superintendent of Public Works Vic Frenz, observed the grievant speaking to another employe, Tom Kucharski, in the Employer's Municipal Garage. Frenz approached the two employes and asked Kucharski if he needed assistance on the welding project he was working on. When Kucharski said no Frenz asked the grievant why he was talking to Kucharski. The grievant responded he was asking Kucharski where the Department's end loader was located. Frenz then directed the grievant to go out and work on the tasks he had been assigned that morning. At this point Frenz testified at the hearing that the grievant "blew", that the grievant became very angry, thrust his finger into Frenz's chest and said, "Do you have a problem buddy?". Frenz further testified that he informed the grievant to go out and do the tasks he had been assigned and turned to walk away. The grievant then moved to his front and asked him... "What is your problem, do you have a problem?". Frenz testified he stated his only problem was the grievant was not doing his job and Frenz again turned to leave. The grievant turned with him and again stated, "What is your problem?". Frenz then directed the grievant to get on with his assigned tasks. Frenz testified that at this point he and the grievant were standing face to face, that the grievant was clearly agitated and that he feared the grievant would strike him. The grievant then exited the garage, slamming the door behind him.

Frenz reported this matter to the Director of Public Works, Lloyd Turner. Turner interviewed both Kucharski and another employe who was working in the garage, Mechanic Ron Abel. Abel informed Turner he was unable to hear what was being said, but described the incident as that of a baseball manager confronting an umpire. Abel did observe the grievant poke Frenz in the chest with his finger and observe the grievant's body shaking and gesturing towards Frenz. Kucharski informed Turner that after the conversation started he walked away. However he did hear the grievant at least twice ask Frenz what his problem was. At the hearing Kucharski could not recall who said buddy, that both Frenz and the grievant were asking each other what the problem was, and that when he informed Turner that, "I wouldn't talk to my boss that way," it was in response to how the scene had been described to him by Turner. Kucharski also testified that both the grievant and Frenz were talking in a loud tone from the onset of the conversation. After interviewing Abel and Kucharski, Turner issued the above written warning to the grievant. Turner did not interview the grievant prior to issuing the written reprimand. Turner did not allow the grievant to comment on the written reprimand when he gave it to him.

At the hearing the grievant testified that it was Frenz who blew up, that he came storming over to where the grievant was and kept asking what was he doing there. Further that Frenz was not paying attention to his response and that he asked him, "What is your problem?". The grievant also testified that

for some time he had requested to create a piece of machinery to help him with his job. That Frenz kept denying his request and that the day before the instant incident, while they were traveling in a pick up truck, Frenz "blew-up" and informed him he was not going to create the piece of machinery. That evening the grievant approached Turner with the matter and requested that Turner not inform Frenz that he had approached him. The grievant also testified that he never touched Frenz or poked him in the chest, that he did state twice "What is your problem?", that he never refused a work order, and that he stood still and Frenz walked away from him and returned and told him to go back to work. The grievant also testified that Abel had been asked to resign from his Union Steward position as a result of a Union investigation conducted by him as the Union president. The grievant concluded that Abel was lying about what he observed in the garage and that Abel had testified on the Employer's behalf on a number of occasions. The grievant also testified he was not interviewed by Turner prior to receiving the written reprimand.

EMPLOYER'S POSITION

The Employer contends it had just cause to discipline the grievant. The Employer contends the grievant without provocation lost his temper, poked his finger into his supervisor's chest and used abusive language towards his supervisor. The Employer contends the grievant was aware of work rules which governed such conduct. The Employer argues such behavior on behalf of the grievant was inappropriate and that there was a basis for disciplinary action.

The Employer asserts it conducted an appropriate investigation prior to reaching a decision to discipline the grievant. The Employer asserts it was Kucharski who volunteered the statement that he would not talk to his boss that way. That Turner had not informed Frenz that the grievant had discussed the creation of a piece of machinery with him the night before the incident and that Turner so informed the grievant when the grievant approached him on the matter a short time after the incident in the garage. Turner did not question the grievant about the matter prior to the issuance of the written reprimand because Turner did not deem it necessary when two employes (Abel and Kucharski) confirmed Frenz's description of the event. Further, that Turner did not permit the grievant to respond when the grievant received the written reprimand because he was concerned over a possible confrontation because Frenz was present. The Employer also asserts that the investigation conducted by Turner established the grievant had committed the actions for which he was charged.

The Employer also asserts there is no issue of union animus in this matter. The Employer points out there is no evidence to corroborate the grievant's testimony either in the form of witnesses or documentary evidence. The Employer also asserts Abel was a credible witness. The Employer asserts that there was no evidence to support an allegation that Abel had resigned from his Union Steward position as result of an investigation by the grievant. The Employer points out that Abel only testified to what he observed and acknowledged he could not hear anything because of the level of noise in the garage and that Abel's testimony was not discredited by the allegations raised by the grievant.

The Employer also asserts the grievant was not a credible witness. The Employer asserts the grievant was unresponsive to questions, evasive, and failed to provide direct answers. The grievant asserted Frenz followed him while Kucharski testified he did not observe Frenz follow the grievant. Further that the grievant testified he went into the garage to ask Kucharski where the end loader was but also testified that after the confrontation with Frenz he left, got into the end loader and drove away. The Employer points out no witness has corroborated the grievant's version of the event.

The Employer concludes the disciplinary action administered to the

grievant was reasonable and requests the undersigned to deny the grievance.

UNION'S POSITION

The Union contends the actions in the instant matter do not warrant any discipline. The Union argues that the inconsistencies of the witnesses, particularly in what was said, demonstrate that there is not a lot of agreement on what happened other than there was some sort of heated discussion between the grievant and his supervisor. The Union argues the actions of Turner in only talking to Frenz and Kucharski prior to leveling discipline leads to a conclusion that a thorough and proper investigation was not done prior to the imposition of discipline. The Union stresses that at a minimum the Employer should have questioned the grievant. The Union also asserts there is a strained relationship between the grievant, his supervisor and Abel and argues weight must be given to possible motives of those involved. The Union does stress there is no evidence that the grievant had any particular axe to grind against Abel or his supervisor. The Union contends there is no way to determine if there was any poking finger, that there was no inappropriate language, with the term "buddy" being as heated as the language got, and the testimony of the grievant and Kucharski disagreeing with Frenz's that the grievant had raised his voice. Given the above the Union concludes the brief incident herein is not worthy of discipline and would have the undersigned sustain the grievance and direct the Employer to cleanse the grievant's personnel file.

DISCUSSION

The record herein demonstrates that Abel observed the grievant poke his supervisor in the chest with his finger. Abel also viewed the situation akin to an argument between a baseball manager and an umpire. This testimony corroborates Frenz's description of the dispute. Kucharski's testimony does not corroborate the grievant's version of the incident. Kucharski did not observe the grievant being followed by Frenz, which clearly contradicts the grievant's testimony. Kucharski did hear the grievant state twice to his supervisor, "What's your problem?". It is also evident Kucharski viewed the matter between the grievant and his supervisor as a confrontation because he testified he did not want to get involved and walked away from the dispute. Given the above the undersigned finds Frenz's version of the event that occurred on February 6, 1992 more credible.

The undersigned also finds there is no evidence in the record to demonstrate that there was any union animus on the part of the grievant's superiors. While the grievant did raise some concerns they are at most unsubstantiated allegations and there is nothing in the record to support the grievant's claims. The undersigned also finds there is nothing in the record to support the grievant's claim that Abel is lying in the instant matter. At most the grievant has raised unsubstantiated allegations with no evidence, documentation or testimony to support these claims.

As the Union has pointed out, Turner did not obtain the grievant's version of the event prior to disciplining the grievant. While this may not be the best practice for an employer to follow, a fair investigation does not rise or fall on whether a grievant has been interviewed. An employer can, as the Employer has argued herein, conclude that such a step is unnecessary because the grievant will only deny the charges of the supervisor, even in the face of evidence which supports the supervisor's position. In the instant matter the Employer has relied on the evidence supplied to it by Kucharski, Abel and Frenz in leveling the discipline. The Employer's conclusion that Kucharski's and Abel's statements to it supported Frenz's version of the event is a reasonable attempt to investigate the matter.

The undersigned concludes that the confrontational actions of the grievant were disrespectful and improper. Further, that the Employer can conclude that such actions of the grievant, mainly confrontational, are grounds for discipline. The undersigned notes here that there is no evidence that the question raised by Frenz, in essence, "Why are you in here instead of performing your duties?" is in any way not a normal question for the supervisor to ask an employe.

Therefore, based upon the above and foregoing, and the arguments, evidence and testimony presented the undersigned concludes the Employer had just cause to discipline the grievant. The grievance is denied.

AWARD

The Employer had just cause on February 11, 1992 to give the grievant a written reprimand.

Dated at Madison, Wisconsin this 9th day of April, 1993.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator