

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 LOCAL 995, AFSCME, AFL-CIO : Case 141
 : No. 48742
 and : MA-7696
 :
 COLUMBIA COUNTY (HIGHWAY DEPARTMENT) :
 :

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME,
 AFL-CIO, appearing on behalf of the Union.
Mr. Donald Peterson, Corporation Counsel, Columbia County, appearing on behalf

ARBITRATION AWARD

The Union and the County named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned to hear and decide a grievance filed by Bruce Johnson. A hearing was held in Wyocena, Wisconsin, on April 29, where the parties presented their evidence and arguments. The record was closed upon the conclusion of the hearing.

ISSUE:

The parties stipulated to the following issue:

Did the Employer have just cause to issue the verbal warning as documented by the employee warning report dated December 17, 1992? If not, what is the appropriate remedy?

BACKGROUND:

Management has the right to discipline for just cause, under Article 3 of the parties' collective bargaining agreement. This grievance is about whether just cause existed for the verbal reprimand given to the Grievant, Bruce Johnson, on December 17, 1992.

Johnson is a patrolman in the County Highway Department. He has worked for the County for over 10 years, and had not been disciplined before December of 1992. 1/ His supervisor, James Hall, has been a supervisor with the Highway Department for more than a year.

On December 16th, Johnson and assistant patrolman James Cross were scheduled to work with a blacktop heater to repair potholes in roads. Hall had located 15 to 20 bad holes in the I-90 Petro area, an area south of Johnson's normal area and usually worked by Bill Kidd. He also found about six potholes on Highway 16 west of the highway shop in Portage, in Jim Cadigan's section.

Hall testified that he told Johnson on the morning of the 16th to fill

1/ All dates refer to the year 1992 unless otherwise stated.

the holes on Highway 16, and then go south on Highway 78 and to continue on south to catch the holes in the I-90 Petro area in Kidd's area, then to come back and do the holes in his own section. According to Hall, Johnson blew up and said he had holes north that were more important than the holes around the Petro area.

According to Johnson, he asked Hall which holes he was to patch first, because there were some bad holes to the north. Hall replied that there were other holes in the south. Johnson asked Hall which direction to go, and Hall said that it was his section, but that he should continue on to the Petro area.

Johnson testified that Hall said, "You know what your section needs." Hall also said that Gene Broesch was to follow Johnson and Cross with a truck, and that Broesch would help patch. Johnson testified that Hall did not specifically tell him to patch the holes in the Petro area that day.

Cross was present at the discussion, and called it a friendly discussion. Cross recalled that Hall said that Johnson should catch the potholes on Highway 16 and catch the Petro area. According to Cross, Johnson told Hall that there were some bad holes to the north, and asked which way Hall wanted him to go. Hall said go ahead and go north and work your way south.

So the crew then patched holes on Highway 16, and went north on Highway 78 & 51. They went up to the Marquette County line, and came back south, patching two lanes on both sides. They patched holes on four ramps on Highway 51, and continued on south toward the Baraboo River. At 2:00 p.m., Broesch had to leave the crew. Johnson and Cross continued on south to patch a couple of potholes on the other side of the bridge into Bill Kidd's section, and turned around and came back, patching only the largest holes as they returned. At 2:45 p.m., they stopped at the Union 76 Station in Portage to fill up the propane tank on the blacktop heater, which took about 15 minutes. They were back at the shop about 3:00 p.m. Johnson went around to the back of the shop with the heater, and Cross brought an end loader around to drop in a bucket of material to fill up the heater for the next day. Then Johnson brought the heater to the front of the shop and disconnected it from the truck, and refueled the truck in the next few minutes. He made out his time card somewhere between 3:15 and 3:20 p.m., and went home at 3:30 p.m.

If Johnson and Cross had continued on south into the I-90 Petro area after Broesch left the crew, it would have been difficult or unsafe without the truck following them, due to the busy traffic in the I-90 Petro area. Also, they would have had to do the work on overtime, which had not been authorized.

Johnson made an assessment not to finish the Petro area because he did not think he had the time. He had been told to get the heater ready for the next day, and it can take up to one-half hour to fill up the propane tank at times.

Hall asked Cross at the end of the day why they did not go into the Petro area and asked if they were out of patching material. Cross said they were not out of material, and to talk to Johnson. When Johnson returned, he told Hall that they did not get the work all done, and Hall replied, "I thought I told you to go south first." Neither Johnson nor Cross recall that Hall said the Petro potholes should have been filled that day, and they filled them the following day.

Hall gave Johnson a verbal warning, dated December 17th, which notes a violation for disobedience, work quality, insubordination, and not completing assignments. Hall's statement is the following:

Employee was given assignment to do on S.T.H. 78 from S.T.H. 16 to the Interstate, when this portion was completed employee was also instructed to proceed to

other areas. Employee did not complete the first assignment, by patching only to the Baraboo River Bridge (S.T.H. 78) not to the Interstate. Ample time was allowed to complete the assignments given by supervisor. Employee was at Portage Shop facility at 3:00 p.m. without completing total assignments.

Hall refused to sign the report and grieved it.

THE PARTIES' POSITIONS:

The Union asserts that there is no supporting evidence for the warning for disobedience, insubordination or work quality. The Grievant did not refuse to accept direction or disobey orders. Hall was less than clear on his instructions, and there was no instruction that the crew was to head south first or that Kidd's section in the Petro area was to be done that day. The assertion that the Grievant blew up at his supervisor is not supported in the record. The Union asks that the warning be expunged from the personnel file.

The County contends that the Grievant knew what he was supposed to do, and that there was no confusion about the assignment, but that the crew used their own discretion to come back to the shop early. The crew either decided that it was not safe to continue on or that they wanted to fill up the heater. However, they could have used the radio first instead of using their own discretion to come back early. The County asks that the discipline be upheld where its position is supported by the testimony.

DISCUSSION:

In this case, at a minimum, the County needs to show that the Grievant disobeyed a direct order given by a supervisor. The County fails to do this.

It is not clear that Hall gave the order that he thought he did. He may have intended to have the crew to fix potholes on Highway 16 first, then go south to the Petro area. But two employees heard it differently. It is not clear to the Arbitrator that Hall's instructions were clearly given to Johnson and Cross. Therefore, there is no solid evidence that the Grievant was disobedient.

The crew did in fact fix the potholes on Highway 16 as directed. The only question is whether Hall specifically directed the crew to go south to the Petro area after that, or whether he told them to go north and work their way south. There is no evidence that the Grievant was being disobedient and taking care of only the "important holes" in his own section, as he followed Hall's order to fix the holes on Highway 16 first. Cross thought they were obeying orders by next going north on Highway 78 & 51 and then coming back south. The County does not prove to the Arbitrator's satisfaction that the Grievant was not obeying orders.

Furthermore, there is no evidence that the Grievant was insubordinate or that the quality of his work warranted a verbal warning. There is no assertion by the County that the quality of work was a matter of concern. There may have been a concern about the quantity of work, if indeed Hall thought there was time for the Grievant to do all the potholes on Highway 16, the Petro area, and the Grievant's own section. However, the County does not contend that all the work could have been done in one day, nor does it assert that the Grievant or the crew should have remained on overtime to do it.

As to the charge of insubordination, there is only Hall's statement that the Grievant smirked at him, and Cross's statement that the Grievant simply

smiled. Nothing to warrant discipline here.

The County did not have just cause to give a verbal warning to the Grievant.

AWARD

The grievance is sustained.

The County is ordered to remove the verbal warning dated December 17, 1992, from Bruce Johnson's personnel files.

Dated at Elkhorn, Wisconsin, this 17th day of May, 1993.

By _____
Karen J. Mawhinney, Arbitrator