BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
COLUMBIA COUNTY EMPLOYEES, LOCAL 995, AFSCME, AFL-CIO	Case 127 No. 48182 MA-7535
and	
COLUMBIA COUNTY	

Appearances:
Mr. David White, Staff Representative, on behalf of the Union.
Ms. Tori Vesley, on behalf of the Employer.

ARBITRATION AWARD

The above-entitled parties, herein the Union and Employer, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Wyocena, Wisconsin, on April 16, 1993. The hearing was not transcribed and the parties there presented oral argument in lieu of briefs.

Based upon the entire record, I issue the following Award.

ISSUE

The parties agreed to the following issue:

> Did the Employer violate the contract when it suspended grievant James S. Voightlander for one day and, if so, what is the appropriate remedy?

DISCUSSION

Voightlander, a Master Mechanic, has been employed by the Employer for about seven years. He was orally warned over his tardiness on September 19, 1991, when he was charged with being tardy on four separate occasions. Voightlander did not grieve the warning.

On June 26, 1992, Highway Commissioner Kurt W. Dey saw Voightlander in the welding shop putting on his safety shoes at about 7:12 a.m. - twelve minutes after the start of Voightlander's shift which started at 7:00 a.m. Dey told him: "You know better than to put on work shoes at 7:12 a.m." Dey said that Voightlander then "debated the issue" by claiming that Dey was not his immediate supervisor. Dey subsequently suspended Voightlander for one day because of his "pattern of tardiness". Dey admits not knowing what Voightlander did between 7:00 and 7:12 a.m.

Shop Foreman Craig Steingraeber, Voightlander's immediate supervisor, testified that he saw Voightlander putting on his safety shoes and that, mindful of Voightlander's past tardiness problems, he told him, "This is not good. You're lucky Kurt is not here." Steingraeber testified he did not see Voightlander by his work area, but admits that "I did not see what time he came in to work." He also admitted that it was possible that Voightlander was working before he put on his shoes.

For his part, Voightlander testified that he arrived at work at 6:50 a.m.; that he was "inspecting the job and doing inspections"; that another employe asked him how to weld something; that he had forgotten to put on his

safety shoes when Steingraeber reminded him to do so; and that he thanked Steingraeber for bringing the matter to his attention. Voightlander also denies that he had a debate with Dey over this issue.

In support of his grievance, the Union basically argues that the Employer has failed to prove that Voightlander was not at work by 7:00 a.m. on June 26, 1992, and that it therefore lacked just cause to discipline him because Voightlander was not charged with wearing improper attire. As a remedy, the Union requests that Voightlander be made whole for his one day suspension and that any references to it be expunged from his personal records. The Employer, in turn, contends that it had just cause to discipline Voightlander because he was not performing his job duties after the start of his scheduled shift.

There are two major problems with the discipline levied here. One, Employer representatives themselves admit that they do not know when Voightlander reported for work. Hence, it is entirely possible that Voightlander reported to work before 7:00 a.m., as claimed. Two, Voightlander testified without contradiction that he talked to a fellow employe about a truck weld when he reported for work, and that was what caused him to put on his safety shoes when he did. Standing unrebutted, this testimony must be accepted as true.

Since this is a discipline case, the Employer bears the burden of proving that Voightlander, in fact, did not report for work until after 7:00 a.m. Based upon the two (2) aforementioned considerations, however, it must be concluded that the Employer failed to meet this burden of proof. Hence, it lacked just cause to discipline Voightlander. It therefore must make him whole by expunging the suspension from his file and by paying him the day's pay he missed.

In light of the above, it is my

AWARD

That the Employer violated the contract when it suspended grievant James S. Voightlander for one day. It therefore shall undertake the remedial action noted above.

Dated at Madison, Wisconsin this 22nd day of June, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator