

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
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 TEAMSTERS LOCAL UNION NO. 43 : Case 23
 : No. 49686
 and : A-5113
 :
 MODERN BUILDING MATERIALS, INC. :
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Appearances:

Mr. Charles G. Schwanke, President, appearing on behalf of the Union.
Mr. William J. Sweeney, Representative, appearing on behalf of the Company.

ARBITRATION AWARD

The Company and Union are parties to a 1993-96 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve the discipline grievance of Dennis Strasser.

The undersigned was appointed and held a hearing on October 12, 1993, in Kenosha, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on November 2, 1993.

Issues:

1. Did the Company discipline the grievant for just cause?
2. If not, what remedy is appropriate?

Relevant Contractual Provisions:

ARTICLE 16. DISCIPLINE AND DISCHARGE

The right to discipline and discharge for just cause and to maintain order and efficiency is the sole responsibility of the company, subject to the grievance procedure herein provided.

. . .

ARTICLE 27. VACATION

An employee who has completed at least one (1) year of continuous service shall be entitled to a vacation with pay, subject to any conditions stated in this Article. Time lost on Worker's Compensation shall count toward vacation earned, provided however, that such employee must have performed twenty-six (26) weeks of work in the applicable preceding year involved. Vacation time is considered as time worked.

. . .

Employees will not be required to work the week-end before or the week-end after their scheduled vacation.

. . .

EXHIBIT "B"

WORK RULES

The work rules which follow have been established for your benefit and protection. These rules are not intended to restrict or impose on the privileges of anyone. They are installed to insure the right and safety of all employees.

<u>RULES</u>	<u>FIRST</u> <u>OFFENSE</u>	<u>SECOND</u> <u>OFFENSE</u>	<u>THIRD</u> <u>OFFENSE</u>
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. . .

8. Refusal to carry out a reasonable order.		3 days off	Discharge
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Discussion:

The facts are essentially undisputed. Grievant Dennis Strasser was scheduled to start his vacation on July 30, 1993, a Friday. The grievant told Bill Sweeney, his supervisor, that he would need to leave for his vacation after eight hours, but Sweeney told him that he had to work until the production schedule he had been given was complete. The grievant subsequently left after eight hours' work. On the same day, Sweeney sent the grievant a notice of discipline under work rule #8, stating that the grievant had left work without permission at 3:00 p.m. and had left two 72-inch diameter pieces and one 36-inch diameter piece uncompleted. The notice of discipline waived the three-day suspension which Sweeney considered normal for a first offense of this nature, because of Company production demands, but rendered the notice as a written warning and stated that any repetition would be subject to discharge.

The grievant stated that two other employes, Jesse VanDoor and Keith Wagner, did the same thing recently and were not given disciplinary write-ups. The grievant also testified that he produced all of the required material except for two "stock" pieces and one piece that was "on hold."

The Company introduced an exhibit to show that at least four other employees, including Keith Wagner, had worked in excess of eight hours on days preceding vacations in 1993.

The Company contends that the grievant was clearly instructed to be sure to stay at work until all of his production was complete, and that the Company needs the work done because all of that production would be needed in the near future. The Company notes that at the hearing the grievant agreed with Sweeney's estimate that only one more hour of work would have been required to complete that production, and argues that the contract does not limit an employee's work day to eight hours the day before a scheduled vacation, by contrast to its protection of the weekends adjacent to a vacation. The Company argues that there is no practice limiting the work day preceding a vacation, contrary to the Union's assertion, and argues that it showed in an exhibit a number of 1992 as well as 1993 instances where employees worked more than eight hours the day immediately before a vacation. The Company requests that the grievance be denied.

The Union contends that the other employees listed by the Company as having worked more than eight hours under such circumstances may have wanted to do so, and that it was unreasonable to force a long-term employee to work long hours on the day of his planned vacation. The Union contends that the grievant should have been allowed to leave, and that the write-up was consequently unreasonable. The Union requests that the warning be removed from the grievant's record.

I can find nothing in the contract or the record to indicate the Company was acting beyond its rights when Strasser was ordered to work until the work was complete. There is nothing in the collective bargaining agreement 1/ restricting the Company's ability to require an employee to work overtime on the day preceding a vacation. While the Company has not demonstrated that the employees listed in its exhibit were ordered to work such overtime against their will, the Union also presented no significant evidence to the effect that there was a practice to the contrary. The grievant named two such employees, but there were no dates or other details given, one of those employees was included in the list given by the Employer, and this testimony was simply too vague to be given much weight. Meanwhile, work rule #8 does clearly specify that an employee can be given a three-day suspension for refusing to carry out a "reasonable" order. Based on the evidence, there is no reason for me to conclude that the order to put in an extra hour or so of work at the end of the day in question was unreasonable. The evidence does not show a consistent pattern of past practice of employees leaving after eight hours against management's will; there was no evidence of any personal crisis being triggered by the Company's refusal to let the grievant go after eight hours; and the Company was clearly in a period of peak production at which any material produced, whether for stock or not, was likely to be needed quickly. I conclude that the order to tell the grievant to remain at work was reasonable, and that the grievant clearly violated it. It follows that discipline was appropriate. Finally, I note that for its own reasons, the Company levied a much less severe penalty than it might have. The conclusion is inescapable that the Company acted with just cause.

1/ Although there may have been in a previous agreement, according to Union testimony at the hearing, there is no evidence that the applicable language was still in effect.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the Company disciplined the grievant for just cause.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 21st day of January, 1994.

By Christopher Honeyman /s/
Christopher Honeyman, Arbitrator