

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, : Case 5  
 CHAUFFEURS, WAREHOUSEMEN AND HELPERS : No. 49305  
 OF AMERICA, LOCAL UNION NO. 695 : A-5077  
 :  
 and :  
 :  
 SILGAN CONTAINERS CORPORATION :  
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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter  
Foley & Lardner, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202, by Mr. Thomas C

ARBITRATION AWARD

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and  
Helpers of America, Local Union No. 695 (the Union) and Silgan Containers  
Corporation (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, on July 2, 1993, 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 Menomonee Falls, Wisconsin on September 16,  
1993. A transcript was taken and received on October 6, 1993. The parties  
filed briefs, the last of which was received November 17, 1993.

ISSUE

Was the Grievant discharged for just cause?

If not, what is the remedy?

BACKGROUND

The Company manufactures food containers for consumer use. Grievant C.H.  
had been employed approximately eleven years. At the time of his discharge, he  
worked as a third shift fork lift operator in the press and assembly  
department. In addition to moving materials and finished product, Grievant was  
responsible for filling in for other employes when they went on their breaks.  
In January, 1989, Grievant had been warned about making threats.

The episode leading to Grievant's termination began on the shift which  
ended at 7 a.m. March 26, 1993. (All dates herein refer to 1993.) Grievant's  
foreman, Ed Plansky and the press mechanic, Bob Guenther, had been working for  
some time on repairing the conversion press. At 6 a.m. the repair was  
completed. At that point Guenther, who had not had a break since his lunch  
break at 3 or 4 a.m., asked Plansky to have Grievant fill in for him to give  
him a break. When Plansky told Grievant to give Guenther a break, he refused,  
and a heated exchange followed. Later, Grievant appeared to offer to fill in  
for Guenther's break. An even more heated exchange took place. Plansky  
reported the incident to the Plant Superintendent who told Grievant to leave  
the plant immediately. Grievant was then suspended pending investigation.

At approximately 10 a.m. of the same day, Grievant slowly drove past  
Plansky's home, then turned around and drove by again, this time on the wrong  
side of the street so that he was on Plansky's side of the street.

Plansky reported this incident to the police and Plant Manager Richard Bailey and when the police officer telephoned Grievant the next day, he told the officer that he was so stressed out that "if they gave [me] anymore shit [I am] going to give him such a blood bath CNN or no one will want to cover the story."

On March 30 and 31, Bailey left messages on Grievant's answering machine, and later faxed him a request to come to a meeting on April 1. Grievant responded by faxing the Company a memo giving his recounting of the incident. On the morning of April 1, Grievant called Bailey from Columbia Hospital where he was a patient receiving counselling. Grievant had been admitted to the hospital as a result of his referring himself to the Employee Assistance Program. A meeting at the hospital took place at Grievant's doctor's request on April 16. After that meeting, by letter dated April 27, Grievant was terminated.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE 6 DISCHARGE PROCEDURE

- 6.1 No employee shall be discharged or suspended except for dishonesty, drunkenness, being under the influence of or in possession of illegal drugs, or the illegal use of dangerous drugs, or other just cause. At least one (1) warning notice shall be given in writing to the Union and to the employee before discharge or suspension can be made except in cases of dishonesty, drunkenness, being under the influence of or in possession of illegal drugs, or the illegal use of dangerous drugs, or other serious offenses as calling for no advance notice of discharge. The first such warning notice shall be effective for a period of ninety (90) days. Any succeeding warning given to an employee for the same or similar offense shall be effective for a period of twelve (12) months. Discharges are to be discussed in advance with the Union Committee, if available.

## POSITIONS OF THE PARTIES

### The Union

The Union asserts that at the time of the incident, Grievant was suffering from mental illness as shown by his hospitalization. It argues the stress of recently learning that he could not give a kidney to his son who might die without a transplant and the stress of disapproval of this supervisor combined to cause him to be clinically depressed. This mental illness should be considered in assessing his conduct. Furthermore, although he expressed anger to his foreman, Plansky, he never engaged in physical attacks.

Additionally, the Union argues that Plansky contributed to the incident by having shown Grievant indifference and irritation the previous week, by making an unreasonable demand to give Guenther a break when Guenther had foregone his regular break and by baiting Grievant. The Company cannot properly discount Grievant's mental illness merely because he was hospitalized after, not before, the incident. Finally, the Union asserts Grievant's eleven years of employment without a serious disciplinary infraction mitigated the degree of any discipline that might be imposed for this incident.

### The Company

The Company argues it had good cause to discharge Grievant for conduct which it calls blatantly insubordinate, abusive and threatening. It points to Grievant's repeated refusal to cover the break as assigned, his threatening behavior in slowly driving past Plansky's house and his statement to the police that he would create a blood bath. It discounts any possible justification of his conduct based on any alleged company harassment or unfair treatment of Grievant. It rejects: the argument that Grievant was merely seeking to talk to Plansky and drive by the house slowly and decided not to stop when he saw Plansky's wife; the argument that Grievant's driving past Plansky's house was off-duty, therefore irrelevant conduct; the argument that termination was not appropriate for a single incident in his record; and the argument that Grievant's actions should be excused as the result of personal stress.

## ADDITIONAL FACTS AND DISCUSSION

Grievant's response to being told to fill in for Guenther was clearly insubordinate and abusive. Grievant does not deny that he refused a direct order when Plansky told him to give a break to Guenther. There is no possible interpretation of this scene that could excuse Grievant's insubordination and abusive language. Not only is it part of Grievant's assignment to fill in for other employes during their breaks, the reason offered by Grievant for refusing, that he was on break himself, could reasonably be disbelieved by Plansky. Plansky saw Grievant arrive on a fork lift truck, not from the direction of the break room which is next to Plansky's office, but from the other direction.

Much more serious than the insubordination and abusive language, however, is the threat and threatening behavior that Grievant made to Plansky, both in the plant and later that morning in front of Plansky's house.

In the second encounter, when Grievant drove up to Plansky on the plant floor and offered to fill in for a break, the two men again exchanged angry words. Grievant, who by virtue of being seated in the fork lift truck was physically situated above Plansky, shook his finger ten inches away from

Plansky's face and said, "You don't know who you're fucking with." 1/ Grievant was clearly threatening that if Plansky continued to anger him, Grievant would wreak harm upon him. A foreman hearing such words from a subordinate might understandably be fearful, and plant discipline is destroyed by such intimidation.

Yet even more serious than Grievant's threat to Plansky in the plant, were his actions outside of Plansky's home. Slowly driving by in the aftermath of their argument was clearly a threat to harm either Plansky or his family. Grievant's act was made more ominous by his driving past the house a second time on the wrong side of the street so as to be next to the Plansky's side of the street.

The intimidating effect of Grievant's act is not lessened by his explanation that he merely wanted to talk to Plansky, but decided not to when he saw Plansky's wife. This arbitrator does not find that explanation credible because it is unlikely that someone would believe that under the circumstances a useful conversation could take place, and because that explanation is inconsistent with the statement Grievant gave to the investigating police officer that he just wanted to see where Plansky lived. Moreover, even if one were to believe the explanation offered at hearing, Plansky could not have known that motivation and could only judge Grievant's prowling by its intimidating appearance.

The sense of menace created by Grievant's stalking Plansky is intensified

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1/ Grievant's version of the story is contained in the memo he faxed to the Company on March 30, which contains language that is both more abusive and more explicitly threatening than Plansky's testimony reflects. Furthermore, Grievant testified that the document was a true and accurate recounting of the incident. The arbitrator does not address the question of this anomalous situation in which the Grievant's version is more incriminating than the foreman's, however, for the conclusions reached in this award are supported by the foreman's version of events. In his document, the Grievant described the second encounter in the plant as follows:

Upon returning from my break Ed Polansky was standing by Burke. I approached him regarding the break. I said, "Okay, who should I break?" He stated, "It's a little to [sic] late, God damn it!" I said, "Quit being an asshole, Ed!" He replied, "Look whose [sic] being an asshole!" I said, "Fuck you mother fucker!" I said, "Your [sic] the kind of asshole you read about all the time in the newspaper. The guy that flips out and goes to work and causes a big blood bath, because an asshole like you thinks he's God and loves to keep fucking with people!" He said, "That sounds like a threat Herzberg." I stated, "No, that's not a threat. Don't put words in my mouth!" He stated three (3) or four (4) times in a row, "You just threatened me!" I repeated again, "No, I didn't threaten you. I'm just telling you that your [sic] the kind of asshole that causes people to lose it!" He said, "Fine, Herzberg, I've been waiting for this moment." I said, "Fuck you!" and drove off.

by the statement Grievant made to the investigating police officer: "If they give [me] anymore shit [I'm] going to give him such a blood bath CNN or no one will want to cover the story."

In his letter discharging Grievant, Plant Manager Richard Bailey stated that the Company's goal is to create a safe, harmonious, productive work atmosphere. At the hearing he elaborated on this goal to express the Company's need to be able to direct the employes without fear of recrimination. The Company is entitled to maintain such a work environment in its plant. Grievant's conduct in being insubordinate and abusive and most of all, threatening the foreman who gave him an order is inimical to such a safe work place. Grievant's threatening conduct jeopardizes not only the immediate target but any employe who might come within range of his wrath.

The arbitrator rejects the Union's argument that the discipline should be lessened by consideration of the personal stress Grievant was experiencing. Six months prior to this incident, Grievant had told Plant Supervisor Joe Molle that he was worried about the health of his son and his ex-wife, both of whom needed kidney transplants. About two weeks prior to the incident, Grievant learned that he had been rejected as a possible kidney donor for his son and he feared for the son's life. Additionally, Grievant reported that he felt harassed by Plansky who earlier in the week had asked Grievant if he needed more training on the pelletizer on which he was having trouble.

Although the event of Plansky asking Grievant about additional training hardly seems to be rise to the level of harassment, the situation of Grievant's family's health was understandably very stressful. However, if the situation made him so distraught that it caused him to threaten the foreman who gave him a simple order, Grievant had a responsibility to take action to relieve that emotional pressure in a acceptable way. 2/

Psychological problems facing an employe can be a factor in reducing the sanction imposed for certain kinds of misconduct in certain situations, but in this matter of Grievant's threatening behavior, the misconduct was too grave to be reduced. In this situation the employer cannot be required to bear the burden of Grievant's emotional problems.

Finally, this arbitrator rejects the argument that Grievant's eleven years of employment without formal discipline is a reason to reduce the discipline from a discharge. Such a period of employment should be taken into consideration, but as in the case of the evidence of emotional stress, that consideration does not abate the appropriate level of discipline in this case of serious misconduct that is threatening and intimidating.

In light of the evidence, the arguments of the parties and the above discussion, it is the Arbitrator's

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2/ One option available to him was the Company's Employee Assistance Program (EAP). That Grievant was aware of the EAP was shown by his ultimate use of it after the incident with Plansky. Grievant was not obligated to make use of the program, but it is an example of an acceptable method of trying to maintain psychological equilibrium.

AWARD

1. Grievant C.H. was discharged for just cause.
2. The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 3rd day of February, 1994.

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