

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 KEWAUNEE ENGINEERING COMPANY : Case 24
 : No. 49983
 and : A-5144
 :
 LODGE 487, INTERNATIONAL BROTHERHOOD :
 OF BOILERMAKERS, IRON SHIPBUILDERS, :
 BLACKSMITHS, FORGERS AND HELPERS, :
 AFL-CIO :
 :

Appearances:

Mr. Steven A. Jewell and Mr. James Pressley, International
 Representatives, 3625 West Tuscarawas, Canton, Ohio 44703, on behalf of
 the Union.
 Godfrey & Kahn, S.C., by Mr. Dennis W. Rader, Attorneys at Law, 333 Main Street

ARBITRATION AWARD

According to the terms of the 1991-1994 collective bargaining agreement between Kewaunee Engineering Company (hereafter Company) and Lodge 487, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as impartial arbitrator to hear and resolve a dispute between them involving the discharge of Richard Tiedtke. The undersigned was designated arbitrator. Hearing was held on March 1, 1994 at Kewaunee, Wisconsin. A stenographic transcript of the proceedings was made and received by March 16, 1994. The parties submitted their post-hearing briefs (including the Company's reply brief) by May 23, 1994. Initial briefs were exchanged through the Arbitrator. The Company sent its reply brief directly to the Union and Arbitrator. The Union chose not to file a reply brief and the record was closed.

Issues:

The parties stipulated to the following issues for decision:

Was the Grievant discharged for just cause?

If not, what is the appropriate remedy?

Relevant Contract Provisions:

MANAGEMENT
ARTICLE III

Section 1. The Company may exercise its functions of management, among which shall be the right to hire new employees and direct the working force, to suspend or discharge for cause, to lay off employees because of lack of work, require employees to observe reasonable Company rules and regulations, to decide the product to be manufactured, the schedule of production including the means and processes of manufacturing. None of these functions or prerogatives shall operate contrarily to other provisions of this agreement nor to be used for the purpose of unjust discrimination against any employee.

Background:

Richard Tiedtke was employed by the Company for twenty-four years prior to his September 15, 1993 discharge. Tiedtke had a clean work record prior to his discharge. Tiedtke had had recurring problems with his back since 1990 or 1991. These problems were not then related to or caused by Tiedtke's work. Tiedtke chose to see a chiropractor for these recurrent back problems, a pinched sciatic nerve in the lower back affecting his right hip.

July 5, 1993 was a paid holiday at the Company and Tiedtke did not work that day. Tiedtke took vacation on July 6th. On July 7th Tiedtke worked a regular eight hour day at his welding job. On July 7th, sometime in the morning, while welding alone, Tiedtke stated that he stepped on a block of wood and wrenched his knee and hurt his back. Tiedtke stated that the pain in his back and knee only lasted a few moments and that he was not concerned about it at the time. Tiedtke admitted that he did not report this injury to the Company or write it on the Company's injury log. 1/ Tiedtke performed his

1/ The Company prints a Company newsletter every two weeks which it makes available to employes by placing copies near the timeclock and in the break room. On at least two occasions in 1992, before Tiedtke had his alleged accident at work, short articles were printed in the newsletter, exhorting employes to report all accidents or injuries "no matter how slight" or "how minor," to the Company immediately. In addition on the back cover of the effective labor agreement is printed: "In case of accident or injury report immediately to First Aid." Furthermore, in October, 1989 the Company mailed each employe a copy of its "Employee Manual" by First Class mail. That manual contained the following:

(Footnote continued on page 3)

(Footnote continued)

6. SAFETY, SANITATION AND MISCELLANEOUS

The company shall provide all safety devices as required by the health and safety regulations of the State of Wisconsin and the United States Department of Labor.

The Company shall cooperate to instruct employees in the use of Safety Devices. All employees are expected

regular welding duties for the rest of that day. Tiedtke did not report any pain in his knee to the Company nurse, his supervisor or any other employes on July 7th. 2/ He also worked his regular shift on July 8.

On July 9th, Tiedtke signed up to work a nine hour overtime shift which started at 6:00 a.m. Tiedtke reported to work as expected, but before 7:00 a.m. he decided to take four hours vacation (starting at 11:00 a.m.). Tiedtke stated that he wanted to do some work on his van at home that day. Tiedtke left work at 11:00 a.m., went home and worked on installing C.B. antennas on his van for about 1.5 hours. At this time, Tiedtke walked down the basement stairs carrying a motor he had apparently used to work on his C.B. radio, and while walking across the basement floor his left leg buckled under him and would not hold his

to cooperate and help to keep our company a safe place to work.

The Company shall provide and maintain such safety and sanitary needs as are necessary to protect and preserve the health and welfare of the employees.

. . .

A.Injuries - any person who is injured on the job shall notify their supervisor immediately. The Supervisor shall assign another person to assist in getting the injured person to the clinic or hospital. The Supervisor shall call the emergency room at the hospital and alert them to the injury.

2/ Tiedtke was admittedly aware of both the need to report accidents and injuries in the injury log book because in 1973, he injured his toe on the job and in 1988 he reinjured this toe on the job. Tiedtke properly made out W.C. claim forms for these injuries and he reported them in the log book. Also in April, 1992, Tiedtke signed the Company's injury log for a "cut on right fourth finger."

weight. Tiedtke stated he did not fall down but caught himself on a cabinet and rested. Tiedtke then tried to put weight on his leg, but it would not hold him up. Tiedtke crawled up the basement stairs and called his wife to come home and help him.

Tiedtke assumed he had pinched his sciatic nerve again, so when his wife came home, Tiedtke had his wife drive him to see his chiropractor, Dr. Kenny. Tiedtke saw his chiropractor almost daily from July 9th through August 20th, to adjust his back. The chiropractor's records show that Tiedtke complained of pain in his left leg and knee during this period. On cross-examination by Mr. Rader, Tiedtke discussed Dr. Kenny's records of his treatment of Tiedtke, as follows:

(By Mr. Rader)

Q Okay. Now, it looks as we review the documentation here, it looks like there was some references to treatment of your knee pretty regularly. Is that a fair statement?

(By Mr. Tiedtke)

A Well, yes, he was treating my knee, too. He had to take and pull on it, and he had to adjust my hip and he had to do this, and he was treating basically both, sir, because with these treatments with my back when he adjusted my hip, he would also have to take and adjust the -- accommodate for what he did to my hip with my leg, too.

Q You never discussed with your chiropractor the accident that you claim took place on the 7th or 6th about slipping?

A No, I did not, sir. (Tr.83)

Tiedtke stated that at this time, both he and his chiropractor thought the pain in his knee was due to the pinched sciatic nerve in his back. Tiedtke stated that whenever his back had gone out before, he usually had pain in his leg. Tiedtke did not consult a medical doctor during this period of time.

Tiedtke made a formal claim for contractual Accident & Sickness (A & S) benefits on July 20, 1993. On that form, Tiedtke stated in answer to the question regarding date and description of accident or sickness "7-9-93 Left leg gave out and would not support weight." Also on this form, Dr. Kenny stated that the injury did not arise out of Tiedtke's employment and that the diagnosis and concurrent conditions were as follows:

Vertebral Subluxation Complex L5/S1, Left Sciatica;
Left knee Neuralgia with edema. Acute low back and hip
pains; Pain left inguinal region.

Beginning with the week of July 10, 1993 Tiedtke began receiving A & S benefits while off work due to the above-described physical problem and he regularly received the proper amount of A & S benefits each week until September 14, 1993. At some time during July, Tiedtke went to the plant to pick up his A & S check. At that time, he had a conversation with his foreman, Gale Ullman. Ullman stated that Tiedtke told him that he (Tiedtke) had stumbled either on the steps or in the basement at home and had hurt himself to the extent that he (Tiedtke) had had to crawl back upstairs and call his wife to take him to the chiropractor. Tiedtke stated that Ullman's account of this

conversation was correct except that he denied telling Ullman that he had stumbled or tripped. On July 23, 1993, Dr. Kenny made out an Accident and Sickness claim form for Tiedtke, giving the dates of treatment as July 9, 1993 through July 23rd and stating Tiedtke's condition was not work-related and that his diagnosis/condition was

vertebral subluxation complex L5. Low back pain. Left Sciatica.

On approximately August 9th, Dr. Kenny released Tiedtke to work on "light medium work" with restrictions on lifting, carrying, sitting, driving and standing. Tiedtke returned to work on August 9th under these restrictions. On or about that day, Tiedtke had a conversation with Foreman Gale Ullman in which Tiedtke told Ullman that he had been injured at home and that he was being treated for lower back problems by a Chiropractor. Ullman stated that Tiedtke had not changed his explanations from those given by Tiedtke to Ullman in July at the plant.

Tiedtke was unable to remain at work due to pain. He went back to see his Chiropractor and Dr. Kenny again excused him from work and treated him from August 9 through August 20. On August 20th, Kenny told Tiedtke to see a specialist about the pain in his knee.

On or about August 23, 1993, Tiedtke went to his regular medical doctor's office. On this day, he saw nurse practitioner Joan Hauer, who told him she thought his knee problem must have been caused by some trauma to the knee. Tiedtke related both the events of July 7th at work and those of July 9th at home. Nurse Hauer examined Tiedtke and Tiedtke stated that Hauer asked him whether he had ever twisted or otherwise injured his knee. Tiedtke stated that it was at this moment that he realized he must have hurt his knee at work in July. Hauer concluded from her examination and her conversation with Tiedtke that Tiedtke's knee injury was serious and probably caused by his stepping on the block of wood at work. Hauer decided to refer Tiedtke to Dr. Weisse for an appointment on August 31st. Dr. Weisse then referred Tiedtke to Orthopedist, Dr. Mohr, for an appointment on September 1st.

On August 26, 1993, Tiedtke went to the Company and filled out a Workers' Compensation claim form with the help of employe Betsy Knijersky. Ms. Knijersky typed the following in the area of the form requesting what happened to cause the accident or injury:

On 08-26-93 reported he is suffering from knee problems resulting from an accident that occurred on 07-06-93 at work. He recalled wrenching his left knee but did not report this at that time.

On August 31, 1993 Dr. Weisse wrote to Dr. Mohr regarding Tiedtke's case in relevant part as follows:

I apologize for the lateness of this letter. Mr. Tiedtke saw me on the 31st and his appointment with you was on the 1st.

The patient reports that on the 6th of July he took a step back, slipped on a block and caused an acute torsion of the knee with subsequent pain in the low back and also the left knee. There was progressive swelling. It was difficult to flex the knee. After about 3 days, it was so swollen he asked his foreman if he could leave work early. When he got home that same day, he said the knee gave way, he had to crawl up the stairs and he had difficulty walking. He saw a chiropractor who felt that the problem was from a chronic back ache. He had put himself on crutches and the chiropractor worked on his back. After about a week the patient stopped the crutches on his own, but said if he was on his knee for over an hour, it began to swell. There had been no more episodes of giving way.

The patient was given a trial of return-to-work with some work restrictions about two weeks ago. He had increasing pain and swelling in his knee, difficulty walking, and he again returned to the chiropractor. He finally saw us on the 23rd of August and he was placed in a hinged knee brace, returned again and was not having much improvement and referred.

Today, on the 31st, the knee actually looks better. He has some mild medial tenderness. He has trace effusion, there is some popliteal swelling, he gets pain with greater than 60 degrees flexion and he had some slight medial laxity. I would like very much if you would proceed with work up and evaluation.

Past history is positive for tonsillectomy, appendectomy, fracture of the right ankle, polycythemia, COPD, hoarse voice, plantar fasciitis, sciatica on the right, varicose veins and now the left knee.

The patient smokes 1/2 pack of cigarettes per day. He takes up to 15 cups of coffee a day. Naprosyn and aspirin have caused an angioedema type rash and we have not given him anti-inflammatories.

Tiedtke admitted during his testimony in this case that he gave Dr. Weisse the above information but that a portion of the second paragraph was not true. On cross-examination Tiedtke stated,

(By Mr. Rader)

Q Okay. Now, you had just testified that when you

asked for the vacation on the 9th, that you did so to work on your van; is that correct?

(By Mr. Tiedtke)

A That's correct, yes.

Q In this doctor's statement which you indicate is accurate with respect to what you told him, it states that after three days it was so swollen he asked his foreman if he could leave work early. Did you tell the doctor in August that you had asked the foreman to leave early because your leg was swollen?

A No, I did not tell the doctor that.

Q Okay. But nonetheless, the doctor wrote this down?

A I told the doctor that when I got to him, but let me put it this way. I turned around and when I went home that day from work, I had some swelling but I didn't think nothing of it. It was something I figured was just going to go away, and that's when my knee gave out on me. That's when I went to see my chiropractor.

Q Okay. But at the time you asked to take the vacation time off on the 9th, that was purely to work on your van?

A That is correct, yes.

Q And nonetheless, however, when you, in August of '93, when you talked to your doctor, you indicated that it was so swollen you asked to leave work early; you did not, however, ask to leave early because your leg was swollen?

A That's correct, yes.

Q Okay. But you did, however, tell your doctor?

A My doctor had to know that. It was something that was a concern to him. He should know that I had swelling in my knee. That might be something beneficial to treating my back for the problem and he said swelling in my knee was due to my back problem.

Q Okay. You told the doctor that you left work on the 9th because your knee was swollen, however?

A Yes, if I recall correctly, I did, yes.
(Tr. 62-63)

By his letter dated September 20th, Dr. Kenny wrote to the Company as follows:

I have rendered care for Richard Tiedtke from July 9, 1993 to August 20, 1993 for an injury to his

low back with extension pain into his left lower extremity.

This condition has existed in the past and is exacerbated from trauma leading to a vertebral subluxation complex.

This vertebral subluxation complex has been reduced. Due to a knee condition Richard has been referred out for care.

Following Tiedtke's formal claim for Workers' Compensation benefits, on August 26th, the Company investigated his claim. During this investigation, it became clear that Tiedtke had made mistakes regarding the actual date of the injury; that Tiedtke had requested and received A & S benefits for July through August regarding an injury he had reported to his supervisor and on the A & S forms as having happened at home 3/; that Tiedtke never requested that those A & S payments cease although he made a Workers' Compensation claim on August 26th; that Tiedtke had not reported any at-work injuries to First Aid, his supervisor or on the injury log during the relevant time period.

On September 14th, at 11:30 a.m. Human Resources Director Robert Papke called Tiedtke into the Company's plant to ask him questions regarding his injury and why he felt it was chargeable under W.C. Present were Tiedtke, his Union representative, Papke and the Plant Superintendent. Tiedtke gave the facts from his perspective and stated that the accident that caused his injury had occurred at the Company on July 6th. 4/

On September 15th, the Company sent Tiedtke the following letter by certified mail:

This letter is a follow up to the meeting with you at 11:30 a.m. on September 14, 1993, where your Workers Compensation claim was reviewed.

Kewaunee Engineering has reviewed this Workers Compensation claim in detail. Specifics on this include:

1. Your failure to notify your Supervisor or Human Resources when you claim the accident happened, contrary to company rules and practices, and consideration of your 24 years with the company.
2. Your statement to your Supervisor that your injury happened at home.
3. Your signed Accident and Sickness claim dated July 20, 1993 stating "07-09-93 left leg gave out and would not support own weight".

3/ Tiedtke received a total of \$1,402.87 in A & S benefits as of September, 1993. Tiedtke's hourly rate at this time was \$12.70.

4/ This, of course, was the wrong date as the Company was closed for the July 4th Holiday on July 6 and Tiedtke had not been at work on July 6th or July 7th.

4. You claim that the accident happened at work on July 6, 1993, a day that you were on vacation and not at work.

Kewaunee Engineering views this as a serious matter. A Workers Compensation claim of this type can cost \$8,000 to \$10,000 or more.

Based on the documents and other information provided, you are discharged from employment with Kewaunee Engineering Corporation effective September 15, 1993 for falsification of information relating to a Workers Compensation claim. Any personal items you may have at work will be shipped to your residence. Insurance information will be provided by separate letter.

Mr. Papke stated that in the five years since he has been Human Resources Manager, no other employe has filed for and received A & S benefits and later attempted to convert the claim to a W.C. claim for additional benefits. On this point, Union Vice President Bill Luedtke stated that in 1989 or 1990, he contracted a respiratory infection. Luedtke requested and received A & S benefits but later he stated he came to believe that he had gotten the infection from the air quality at the plant and he applied for W.C. benefits. He was denied Workers Compensation. Luedtke stated that he was not disciplined for

filing for A & S and also filing for W.C. and that the Company never accused him of falsifying his claims or other documents. There was no evidence to show that other employes had been accused by the Company of falsifying Workers Compensation claims. 5/

Positions of the Parties:

Employer:

The Employer urged that all other employes including Tiedtke, were aware that they had to report all on-the-job injuries, no matter how slight. In this regard, the Company observed that in 1973 and in 1992, Tiedtke had properly reported several slight injuries he had received at work. The Company newsletter, policy book, and the notice printed on the cover of the contract made it clear that immediate reporting of job-related injuries on the Company's injury log was vital. Thus, the Company urged, Tiedtke's failure to report his knee injury until almost two months after it allegedly occurred at work should "lead one to conclude (that) the injury did not occur in the manner alleged by the Grievant."

In addition, the Company argued, the facts of this case when considered in conjunction with Tiedtke's conflicting testimony should lead one to the conclusion that Tiedtke knowingly filed a fraudulent Workers' Compensation (W.C.) claim. The undisputed facts which were considered by the Company at the time it decided to discharge Tiedtke were:

1. Tiedtke was not at work on July 6th.
2. He filed a Worker's Compensation claim on August 28th in which he stated he had been injured on the job on July 6th. (Tiedtke later changed this date to July 7th).
3. Tiedtke worked eight hours on July 7th and 8th and he worked overtime in the morning of July 9th.
4. Tiedtke asked and received one-half day's vacation on July 9th to work on his van.
5. Tiedtke filed and received Accident and Sickness benefits due to an injury to his back which he reported occurred at home on July 9.
6. Tiedtke never reported to his chiropractor or the Company that he had been injured at work during this period of time.

5/ Testimony offered by Union President Lutzen regarding his own and employe Theys' W.C. claims showed that neither Lutzen nor Theys had filed for A & S benefits nor had they been accused by the Company of falsifying their W.C. claims.

Beyond these facts, the Company pointed to certain inconsistencies in Tiedtke's testimony in this case which also showed he lacked credibility.

7. Tiedtke told his orthopedist that he took vacation on July 9 because his knee was swollen despite the undisputed fact that he actually took vacation on July 9 to work on his van.
8. On his W.C. claim form, Tiedtke reported his first day off work due to the injury had been July 9.
9. No medical doctor ever diagnosed Tiedtke's injury as work-related - they only reiterated what Tiedtke had reported to them regarding how the injury had occurred.

Based upon the evidence in this case, the Company asserted, it had just cause to discharge Tiedtke for fraudulently filing a W.C. claim. Initially, the Company observed, because Tiedtke's offense involved his breach of commonly known, basic principles of honesty, no specific notice was required that filing a false W.C. claim would be cause for discharge. Second, the Company noted that it has every right to expect its employees to be honest in their dealings with the Company and that the Company fairly and objectively investigated Tiedtke's claims, and asked for and got Tiedtke's side of the story regarding his claims before it discharged him. The Company further contended that at the completion of Mr. Papke's investigation, the Company had substantial evidence that Tiedtke had knowingly filed a false W.C. claim.

The Company argued that the Union failed to produce any evidence to show that the Company had treated other similarly situated employees more leniently than it did Tiedtke. On this point, the Company asserted, neither Union President Lutzen's statements nor the example regarding employee Theys, bore any similarity to Tiedtke's case: In neither the Theys nor the Lutzen cases did the Company find those employees had falsified W.C. documents and in neither case had the employee made a claim for A & S benefits and later tried to convert it to a W.C. claim. Given the seriousness of Tiedtke's offense, not only due to the dollar value of the W.C. claim but also due to Tiedtke's breach of trust with the Company by his dishonest, fraudulent conduct, the Company urged, Tiedtke's immediate discharge was appropriate. The Company observed that it had met all seven Just Cause Tests enunciated by Arbitrator Dougherty, and that the grievance should be denied and dismissed in its entirety.

Union:

The Union argued that the Company did not thoroughly investigate Tiedtke's W.C. and A & S claims. Nor did it extensively discuss the allegations of fraud with Tiedtke prior to discharging him. The Union contended therefore, that the Company had insufficient evidence on the record to sustain a conclusion that Tiedtke actually intended to defraud the Company by his actions.

The Union observed that Human Resources Director Papke admitted that other employee on-the-job injuries may have gone unreported in the past because symptoms of these injuries would not appear immediately. Papke also admitted that the Company newsletter is not sent to all employees. The Union urged that Tiedtke's uncertainty regarding the date of his injury did not, in itself, prove fraud given the intervention of the July 4th Holiday. The Union asserted that Tiedtke's admissions to his foreman, Gale Ullman, that he had injured himself at home on July 9th do not foreclose a conclusion that Tiedtke first injured himself on July 7th at work. The Union pointed out, on this point, that no one but Tiedtke knew his true intent when he spoke to Ullman or when he put in the A & S and W.C. claims.

The Union therefore contended that only Tiedtke's testimony and the

supporting medical documents satisfactorily explain what occurred in this case. The Union also urged that in the unusual circumstances of this case -- including differing medical diagnoses regarding Tiedtke's injuries -- require a conclusion that Tiedtke's testimony must be credited.

In addition, the Union pointed to the testimony of Union witnesses Lutzen and Luedtke to show that other employes have been treated far less harshly than Tiedtke: Other employes who converted claims, from A & S to W.C., did not get discharged; others who did not report injuries were not discharged.

Therefore, the Union contended that the Company had failed to meet its burden of proving by clear and convincing evidence that Tiedtke was discharged for just cause. In fact, the Union observed, some arbitrators would require the Company to have proof beyond a reasonable doubt to discharge Tiedtke. Thus, the Union sought reinstatement and backpay for Tiedtke.

Reply Briefs:

Company's Reply:

The Company strongly resisted the Union's assertion that the Company had conducted a "minimal" investigation prior to discharging Tiedtke. The Company noted that Tiedtke also had Union representation during his interview with the Company officials on September 14th. The Company objected to the Union's description of the September 14th interview -- that Tiedtke had been called into the Company under false pretense, that the meeting had been brief and that at the meeting, Tiedtke had not been allowed to give his side of the story. The Company observed that the Union's assertions were contrary to the record and Tiedtke's testimony in which he stated that he had been given a full opportunity to speak on September 14th.

The Company argued that the record does not support the Union's claims that the Company failed to follow past practice when it discharged Tiedtke. On this point, the Company observed, Lutzen's testimony regarding his W.C. case and the Theys case showed that neither Lutzen nor Theys had been accused of defrauding the Company and that they had not engaged in the same acts as Tiedtke. In regard to the evidence regarding Luedtke, the Company pointed out that Luedtke was never accused of falsifying or misrepresenting information on his W.C. claim.

The Company again reviewed the facts it contended supported its decision to discharge Tiedtke. The Company further asserted that it should not be held to proof "beyond a reasonable doubt" to show it had just cause to discharge Tiedtke as Tiedtke's case involves simple dishonesty, not criminal activity. The Company therefore sought an Award denying and dismissing the grievance.

Discussion:

The facts of this case, taken in conjunction with the Grievant's testimony, require a conclusion that Tiedtke intentionally falsely filled out a Worker's Compensation claim. Most significant in reaching this conclusion are the facts which showed that in 1973 and in 1992, Tiedtke properly reported at least two minor on-the-job injuries in the injury log. Yet, when Tiedtke allegedly stepped on a block at work and wrenched his back and his knee, he never reported this injury on the Company's injury log, to his supervisor or to the Company nurse. In addition, at the time it occurred, Tiedtke never told any of his co-workers about this alleged injury. Tiedtke stated that he was welding alone when the injury occurred so that no witnesses observed his actions.

It is also extremely important in the context of this case, that Tiedtke worked a full eight-hour day on July 7th, despite his alleged injury; that he worked a full day on July 8th and that he worked five hours of overtime on July 9th before going home on July 9th to work on his van. At no time during this three-day period did Tiedtke complain to anyone of pain in his back or his knee. Nor did he request sick leave during this three-day period. The fact

that Tiedtke felt well enough to sign up to work overtime on July 9th, also tends to undermine Tiedtke's statements in this case.

I note that Tiedtke told his supervisor, Gale Ullman, all of the details of his being injured at home shortly after that injury occurred. Tiedtke also timely and accurately made out a claim for A & S benefits, based on his July 9th at-home injury. Thus, at the time he claimed A & S benefits, Tiedtke was not confused regarding the date or place of that injury. Yet at the end of August when he filled out the W.C. claim involved in this case, Tiedtke confused the date of his alleged injury on-the-job.

In addition, the evidence showed that following his serious at-home injury on July 9th, Tiedtke chose to go to his chiropractor for treatment of a back problem. Notably, Dr. Kenny treated Tiedtke almost daily for this back problem from July 9th until Dr. Kenny finally referred Tiedtke to his family doctor at the end of August for a knee problem. I note that Dr. Kenny's records showed that Tiedtke regularly reported knee pain following Tiedtke's July 9th injury at home. Despite this fact, Tiedtke never told Dr. Kenny that he had been injured at work during this treatment period with Dr. Kenny and Dr. Kenny never identified or treated a separate knee injury during this treatment period.

Tiedtke also never saw a medical doctor or orthopedist during this time. It was not until Tiedtke consulted with nurse practitioner Joan Hauer at the end of August that it occurred to him that his knee problem must have been related to his having allegedly stepped on the block of wood at work, almost two months previously. Tiedtke's statements upon cross-examination show that the knee problem could have been created or exacerbated by the chiropractor's adjustments to Tiedtke's back, as the chiropractor had had to adjust Tiedtke's knee each time he adjusted Tiedtke's back.

Furthermore, I agree with the Company's arguments that neither Dr. Weisse nor Dr. Mohr actually found or concluded that Tiedtke's knee injury had occurred at work -- they merely reported what Tiedtke reported to them. In this regard, the fact that Tiedtke admitted falsely reporting to Dr. Weisse that he had gone home on July 9th because of knee pain, seriously undercuts Tiedtke's credibility in this case and shows that, at the very least, Tiedtke did not give the same story to his doctors that he gave under oath in this case.

The Union contended that the Company's investigation was insufficient and cursory. I disagree. The record showed that the Company promptly investigated Tiedtke's W.C. claim upon receiving information to justify an investigation and that the Company then interviewed all relevant witnesses, including Tiedtke. I note Tiedtke was represented by the Union at his September 14th interview with company managers.

The Union also failed to prove that the Company discriminated against Tiedtke in any way. The record in this case showed that Tiedtke's case was factually distinguishable from those of Lutzen, Theys and Luedtke. Neither Lutzen, Theys nor Luedtke was ever accused of defrauding the Company or of misrepresenting facts on their claim forms. Neither Lutzen nor Theys filed for A & S benefits and later attempted to convert their A & S claims to W.C. claims as Tiedtke did. Whether or not other employes have failed to immediately report their on-the-job injuries does not diminish the fact that Tiedtke clearly knew, from previous personal experience, that he should report any on-the-job injuries to the Company immediately. As Company official Papke stated without contradiction, there were no other cases reported which were similar to Tiedtke's where the employe had reported an off-the-job injury which he/she later reported to have occurred on-the-job.

In the circumstances of this case, I am convinced that the Company's

September 15, 1994 letter was accurate and that on these grounds the Company had just cause to immediately discharge Tiedtke. Therefore, I issue the following

AWARD

The Grievant was discharged for just cause.

The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 27th day of July, 1994.

By Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator