

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
 :
UNITED FOOD AND COMMERCIAL :
WORKERS, LOCAL UNION 73A, : Case 14
Affiliated with THE UNITED FOOD : No. 50855
AND COMMERCIAL WORKERS, INTERNATIONAL : A-5214
UNION, AFL-CIO :
 :
and :
 :
MOORE'S FOOD PRODUCTS, INC. :
 :

Appearances:

Mr. Bill Roberts, Business Representative, on behalf of the Union.
Mr. John F. Steddick, Human Resources Manager, on behalf of the Company.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "Company", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Fort Atkinson, Wisconsin, on August 1, 1994. 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 have agreed to the following issue:

Was the three-day disciplinary suspension given to grievant Craig Langlois for just cause and consistent with the terms of the collective bargaining agreement and past practice, and if not, what should the remedy be?

DISCUSSION

The facts here are short and simple.

Fork lift operator Langlois on Saturday, February 26, 1994, worked 11 1/2 hours overtime. At the end of his shift at about 4:30 p.m., Langlois was asked to park fork lift No. 7 in the dock area. Langlois then proceeded to back it into an empty space between loading dock doors 4 and 5. In doing so, his wet foot slipped and became wedged between the gas pedal and brake when he reached to pull the hand brake. That caused the back of the fork lift hit a door frame and some cinder blocks, causing about \$2,300 worth of damage.

Langlois testified that the floor was wet and slippery at the time and that that is what may have caused his foot to slip. He also said that he did not first adjust the seat on the fork lift when he first got on it and that it was unnecessary for him to do so because his legs were able to work the floor controls with ease. Langlois also said, "my foot slipped and I panicked", but that he was not negligent in causing the accident.

He further testified that as he was backing the vehicle, his left arm accidentally hit the shift lever - which he thinks was in neutral - and that that is what caused the vehicle to lurch backwards. He also said that he was

not driving fast - a point corroborated by fellow employe Rose Kohman who, while not witnessing the accident's impact because her view was obstructed by another fork lift, also testified to that effect.

The Company, on the other hand, asserts that the shift lever could not have been dislodged in that fashion and that Langlois, in fact, left the gears in reverse contrary to Company practice so that he could save some time in turning off the engine and leaving work as soon as possible.

In this connection, Plant Administrative Manager Thomas Dill testified that while Langlois is a very competent fork lift driver, he is "somewhat cocky" and tends to be somewhat unsafe because he "drives on the fast side", a situation which has caused some of Langlois' fellow drivers to complain about Langlois' driving habits even though they never gave Dill any specifics. Dill also said that when he spoke to Langlois about the accident, Langlois then admitted to leaving the shift lever in reverse.

The Company suspended Langlois for three days without pay for violating Work Rule A-10, which states:

"Reckless/negligent work practices; machine operation or vehicle operation on Company premises."

In support of Langlois' subsequent grievance, the Union primarily contends that Langlois was not driving too fast and that he was not negligent because, "his foot merely slipped"; that the accident occurred after Langlois had worked 20 1/2 hours in a 2-day period; and that prior accidents relied upon by the Company are not comparable to the facts here. 1/

The Company, in turn, asserts that it properly exercised its managerial rights when it disciplined Langlois; that as a member of the plant's Safety Committee, Langlois knows the Company's safety rules and is expected to follow them; and that it has made "strong statements" in the past about the need for safety by disciplining employes over similar safety lapses.

The resolution of this issue partly turns on what caused Langlois' fork lift to back up and cause \$2,300 worth of damage.

Having personally seen the fork lift and the loading dock, I find that the fork lift lurched backwards because Langlois left the shift lever in reverse when parking the fork lift and that he was negligent in doing so because Company policy requires that the shift levers be left in neutral when fork lifts are parked. I therefore am unable to credit Langlois' testimony that he may have put the shift lever in neutral and that it jumped into reverse when his left arm accidentally brushed it when he went to set the parking brake, since it is highly unlikely that the shift lever could have been moved in that fashion. Langlois' failure to properly leave the shift lever in neutral therefore warrants some degree of discipline commensurate with the damage he caused.

The record shows that the Company in the past has issued 3-day disciplinary suspensions to fork lift operators Raul Guerra, Liz Heine, and Joe Pilior when they caused accidents. Although the Union asserts that none of these factual situations are similar to the facts here, I find otherwise since

1/ The Union also argues that the Company has unfairly singled out Langlois because it did not impose any discipline on fork lift truck operators Larson and Moran when they had prior accidents. As I ruled at the hearing, however, these two other accidents were dissimilar to the facts here because: (1) Larson was not at fault when his fork lift truck dropped 2-3 inches and when he broke his neck; and (2) Moran was a trainee at that time and therefore could not be expected to be as proficient as Langlois or other experienced fork lift operators.

the Company respectively suspended Guerra, Heine, and Pilior for "Reckless operation which resulted in damage to door into garbage room"; "Reckless machine or vehicle operation on Company premises"; and "Reckless machine operation". All of those prior accidents thus violated the Company's Work Rules which state that discipline can be imposed over:

"10. Reckless/negligent work practices; machine operation or vehicle operation on company premises."

That is the very situation we have here, which is why Langlois' suspension constituted an appropriate punishment.

The only possible basis for concluding otherwise is the fact that Langlois worked 20 1/2 hours in a 2-day period and that he surely must have been tired when he had his accident. Such fatigue, though, does not excuse Langlois' carelessness, particularly since he never indicated to management that he was unable to properly perform his job duties.

Accordingly, it is my

AWARD

That the three-day disciplinary suspension given to Grievant Craig Langlois was for just cause and consistent with the terms of the collective bargaining agreement and past practice; the grievance is therefore denied.

Dated at Madison, Wisconsin this 24th day of August, 1994.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator