

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between : Case 9
: No. 51301
: A-5261
TEAMSTERS LOCAL UNION NO. 43 :
: Case 10
and : No. 51302
: A-5262
PROMOTIONS UNLIMITED CORPORATION :
:
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Appearances:

Mr. Charles G. Schwanke, Representative, on behalf of the Union.
Mr. Larry Greenfield, 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 Racine, Wisconsin, on September 13, 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.

ISSUES

1. Whether the Company violated the contract by not giving employees their vacation requests and, if so, what is the appropriate remedy?
2. Whether the Company had just cause to terminate grievant Kenneth Paque and, if not, what is the appropriate remedy?

1. The Vacation Grievance

The parties in 1994 reached agreement on a successor 1994-1997 contract which was retroactive to March 1, 1994, and which provided in Article 9:

ARTICLE 9. VACATIONS

All employees within the bargaining unit who on their respective anniversary dates of employment by the company are eligible for vacations shall receive vacations with pay as follows:

<u>Length of service</u>	<u>Amount of Vacation</u>
For 1 year or more, but less than 2 years	one week
For 2 years or more, but less than 9 years	two weeks
For 5 years or more, but less than 17 years	three weeks
For 17 years or more	four weeks

To be eligible for a vacation an employee must have

worked thirty-six (36) weeks of the year immediately preceding his vacation period.

The company shall, if conveniently possible, grant employee requests for vacations at periods other than herein specified, it being understood, however, that the final decision on vacations is reserved exclusively in the company.

This represented a new vacation schedule because the prior contract stated in Article IX:

ARTICLE IX. VACATIONS

All employees within the bargaining unit who on their respective anniversary dates of employment by the company are eligible for vacations shall receive vacations with pay as follows:

<u>Length of service</u>	<u>Amount of Vacation</u>
For 1 year or more, but less than 2 years	1 week
For 2 years or more, but less than 9 (sic) years	2 weeks
For 6 years or more, but less than 17 years	3 weeks
For 17 years or more	4 weeks

To be eligible for a vacation an employee must have worked thirty-six (36) weeks of the year immediately preceding his vacation period.

The present 1994-1997 contract therefore provides for three weeks vacation after five years of employment, whereas the prior contract provided for three weeks vacation after six years of employment.

Prior to March 1, 1994, grievant Irene Lerdahl and about 11 other employees reached their five year anniversary dates which enabled them to receive two weeks' vacation under the prior contract. After March 1, 1994, yet other employees reached their five year anniversary dates and were given three weeks' vacation under the current contract. As a result, Lerdahl and these other employees received one weeks' vacation less than less senior employees, as she and they must wait for their next anniversary dates - which in Lerdahl's case is October 20, 1994 - to receive a third week of vacation.

During the negotiations leading to the current contract, Company negotiator Wayne Lazenby told Union representatives that five year employees whose anniversary dates preceded March 1, 1994, would not receive the extra week of vacation given to those employees whose anniversary dates occurred after March 1, 1994.

There was a suggestion at the instant hearing that a Company representative told employees before their first vote on the contract that employees like Lerdahl would receive a third week of vacation after five years.

However, the facts do not bear that out since there is no proof that any such representation - which the Company denies - was ever made.

The Union grieved this situation, hence leading to the instant

proceeding.

As I ruled at the hearing, there is no merit to the Union's grievance since Lerdahl and other affected employees before March 1, 1994, were covered by the predecessor contract which did not provide for three weeks of vacation until after employees worked six years - which is something that Lerdahl and others had not done by that date. That is why the Company before March 1, 1994, was not required to give them three weeks vacation.

Employees with five years employment thus were not entitled on their anniversary dates to three weeks vacation until after March 1, 1994, since that is what the current contract provides. Lerdahl and others thus must wait for their next anniversary dates to receive this benefit.

This result may be somewhat unfair because less senior employees today are receiving more vacation than Lerdahl and others. But, nothing can be done about that because that is what the contract provides and because Lazenby expressly pointed out that situation in negotiations. Hence, the grievance must be denied and dismissed.

2. The Paque Grievance

Truck driver Paque - who has a hire date of September 6, 1990, and who has never been disciplined - on Friday, July 1, 1994, 1/ told Dispatcher Mike Phegley over the telephone that he did not want to work the July 4 weekend. Phegley prior thereto had tried to obtain a substitute driver for Paque's July 4 run when Paque previously complained about it, but to no avail.

Phegley told Paque this on July 1 and suggested that Paque leave on Tuesday, July 5, at 2:00 a.m. - 4:00 a.m. in the morning so that he could spend Monday, July 4, with his family. Paque replied that he would not do so.

Phegley then said, "I guess you are telling me you are quitting", to which Paque replied, "I guess I am". 2/

On Tuesday, July 5, Paque went to the plant at about 8:30 a.m. to report that he had broken his hand in a fight. The Company nevertheless refused to reinstate him, as it claims that Paque violated Rule 1 of its Policy Manual which states: "The following rules are illustrative of the kinds of offenses which may be the basis for disciplinary action up to, and including discharge.

Major Violations:

1. Insubordination (refusal or failure to perform work assignments or to comply with instructions from supervision)."

Paque grieved his termination, hence leading to the instant proceeding.

The Union mainly contends that discharge is too severe a penalty to impose on Paque and that mitigating factors exist because Paque broke his hand and thus could not have worked on July 5 in any event because of his broken hand, even if he wanted to.

The Company, on the other hand, asserts that it had just cause to discharge Paque because of his July 1 insubordination in refusing to work on

1/ All dates hereinafter refer to 1994.

2/ I credit Phegley's account of this conversation.

July 4 and that, moreover, what subsequently happened to Paque's hand in any event is immaterial since he was separated from employment by the time he broke it. The Company also points out that about 29 of its 36 drivers left and worked on July 4 even though they may not have wanted to and that it cannot permit its drivers to decline holiday work the way Paque did here.

The Company is correct, particularly when it is remembered that Phegley went out of his way in trying to accommodate Paque by trying to get another driver to take his July 4 run and by later suggesting that Paque leave at 2:00 - 4:00 a.m. on July 5. Moreover, irrespective of whether we characterize Paque's July 1 actions as a voluntary quit, the fact remains that he was insubordinate that day when he flat out said that he would not work on July 4. As a result, he was subject to immediate discharge pursuant to Rule No. 1, ante.

The only mitigating factor supporting Paque's reinstatement is the fact that his hand was broken by July 4 and that he could not drive that day. However, he broke his hand after July 1 when he effectively was terminated by the Company because of his insubordination. It therefore is immaterial as to what happened thereafter. That is why the Company had just cause to terminate Paque.

In light of the above, it is my

AWARD

1. That the Company did not violate the contract by not giving employees their vacation requests; their grievance is therefore denied and dismissed.

2. That the Company had just cause to terminate grievant Kenneth Paque; his grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 27th day of September, 1994.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator