

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 LOCAL UNION 2832, Affiliated with : Case 44
 MIDWESTERN INDUSTRIAL COUNCIL, : No. 50479
 UNITED BROTHERHOOD OF CARPENTERS : A-5176
 AND JOINERS OF AMERICA, AFL-CIO :
 :
 and :
 :
 EGGERS INDUSTRIES, INC. :
 :

Appearances:

Mr. Conrad Vogel, Business Representative, Midwestern Industrial Council,
 United Brotherhood of Carpenters & Joiners of America, AFL-CIO, on
Mr. Gary Milske, Personnel Manager, on behalf of Eggers Industries, Inc.

behalf

ARBITRATION AWARD

Local 2832, hereinafter the Union, and Eggers Industries, Inc., hereinafter the Company, jointly requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the Company, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on April 14, 1994, in Neenah, Wisconsin. A stenographic transcript was made of the hearing and the parties submitted post-hearing briefs in the matter by June 24, 1994. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated to the following statement of the issues:

Was the Grievant, David Riedel, unfairly disciplined for excessive glue sinkers in eight doors on June 22, 1993 and June 23, 1993? If so, what is the remedy?

CONTRACT PROVISIONS

ARTICLE TWO - MANAGEMENT CLAUSE

2.1 The management of the plant and direction of the working forces, including the right to hire, suspend or discharge for just cause; to assign jobs, to promote and/or transfer employees within the plant, to increase and decrease the working force, to establish standards, to determine products to be handled, fabricated or manufactured, the schedules of production and the methods, processes and means of production or handling are vested exclusively in the Company.

. . . .

2.4 When an employee covered by this agreement is discharged for cause or has disciplinary measures

imposed upon them by the Company, the chairman of the Union Shop Committee shall receive a copy of the letter or notice written to the employee outlining the particular course of action involved as soon as possible after such action occurs.

BACKGROUND

The Company operates a production facility in Neenah, Wisconsin and the Union is the collective bargaining representative of the Company's production and maintenance employees and over-the-road truck drivers at the facility. The Grievant, David Riedel, has been employed by the Company since 1986. At the time in question, he was employed by the Company as a Utility Operator I, Fire Door Department, and was operating the Onsrud Press. It was his second stint on the Onsrud press, having previously operated it for six weeks. On this occasion, he replaced the regular operator, Tom Wiese, who had broken his wrist. The Grievant worked on the Onsrud for seven weeks on this second occasion.

On June 25, 1993, two employees in the Detail and Patch Department contacted the Assistant Foreman in that department about excessive glue sinkers (globs or runs of glue) in some doors. The doors had been set aside off the sander. One of the doors had at least 50 glue sinkers in it and another had 3 or 4. The Assistant Foreman then called the Assistant Quality Control Manager, David Nettekoven, to find out why the doors were there. Nettekoven came and he and the Assistant Foreman went through the rest of the doors and found more with 3-4 glue sinkers on them for a total of 7 or 8 doors. Nettekoven checked to see who had pressed the doors and found the Grievant had pressed them on June 22 and 23. Nettekoven then called the Grievant to Detail and Patch to look at the doors. The Grievant indicated he thought the glue came off from the boards on his press, that the boards were difficult to clean and that he had asked his foreman for plywood boards. The door with the approximately 50 glue sinkers had to be veneered; the rest were repaired without being veneered.

The Grievant was given the following letter of reprimand for excessive glue sinkers on the doors he did on June 22 and 23, 1993 for violating Rule 19:

DISCIPLINARY ACTION NOTICE

EMPLOYEE: Dave Riedel

DEPARTMENT: Fire Door/ESA

On June 22, 1993 and June 23, 1993 you violated the following Plant Regulation:

RULE NUMBER #19: Employees are expected to know the job detail of their particular work (including achieve acceptable time standard efficiencies) and to read and follow all instructions on job tickets carefully. Employees shall be held responsible when the quality or accuracy of their work indicated failure or laxity to comply with this rule.

WHEN IN DOUBT - QUESTION YOUR DEPARTMENT MANAGER

Mr. Riedel pressed eight (8) doors with massive amounts of glue sinkers. Dave had been warned previously for not following the hot press procedure for scraping the press.

You received a copy of the Company rules and should be familiar with them. If there is anything you do not understand, your Department Manager will be glad to explain it to you.

This notice covers a warning or a lay-off (as checked below) in connection with the violation of a particular rule.

Your failure in this respect can still be corrected. Please do not let it happen again. When in doubt, ask your Department Manager.

(X) Warning Number 3
() Lay-off Days

Signed: Michael Neumann /s/
Mike Neuman
Department Manager
EGGERS INDUSTRIES INC.

* 4 letters within a 12 month
period will result in

termination.

The Grievant had previously been warned on June 3, 1993 and June 11, 1993, about not using the centering sticks when loading his press and about excessive glue sinkers, respectively.

The Grievant grieved the warning letter he received. The parties attempted to resolve their dispute, but were unsuccessful and proceeded to arbitration on the grievance before the undersigned.

POSITIONS OF THE PARTIES

Company

The Company asserts that to prevail, the Union must show either that the Grievant was not responsible for the glue sinkers, or that the Company did not have the right to discipline him or that the Company acted in an arbitrary

manner.

The Company first asserts that it has shown that the Grievant was responsible for the glue sinkers on the doors. The Grievant was trained as an operator to watch for glue sinkers and he was previously warned about glue sinkers. Therefore the Company was not arbitrary in disciplining the Grievant.

The Grievant either did not even look for glue on the boards of the press or did a poor job of scraping them. The witnesses testified that these were some of the worst doors they had ever seen with regard to glue sinkers. The excuse given by the Grievant that the Masonite boards caused the problem is not persuasive. The Masonite boards were only used on two of the eight doors and the assertion that heat caused the glue to expand out of the Masonite was something that was not supported by the experience of the other operator on the Onsrud or Nettekoven. The experimenting with different press times and pressures on the Onsrud also had nothing to do with excessive glue sinkers. It is standard procedure on all of the presses to continuously check for glue sinkers.

The assertion that no one had ever been disciplined before this for glue sinkers is in error. While there have been reveneers in the past due to glue sinkers, other press operators have received verbal warnings in that regard. Further, the Grievant has had more problems with glue sinkers than other employees. The Union presented evidence showing that on all of the presses there were 109 reveneers for glue sinkers during a 12 1/2 week period in 1992 with a 3200 doors per week being pressed. However, looking only at the Onsrud press, which the Grievant was operating at the time, shows that of the three operators that had operated that press in 1993, the Grievant had a total of 33 reveneers for glue sinkers during a total of 13 weeks he was on the Onsrud press, or a rate four times that of the mill as a whole, seven and one-half times that of one of the Onsrud operators (Lautenschlager), and twenty times the rate of the other Onsrud operator (Wiese).

The Grievant routinely made more mistakes than the other press operators and he had been verbally warned before this. Therefore, the Company was justified in issuing the Grievant a disciplinary letter for his mistakes on June 22 and 23, 1993, the days the eight doors were pressed.

Union

The Union takes the position that the Grievant was disciplined unfairly. The Grievant testified that he followed the procedure for scraping the press. The Assistant Foreman in the Detail and Patch Department testified only one out of the eight doors involved had to be revenered and no one had ever been disciplined for glue sinkers before this. Further, the verbal warnings the Company claimed it had given the Grievant previously for glue sinkers were not verbal warnings. The note of June 11, 1993, merely states that a discussion was held with the Grievant about severe glue sinkers in several fire doors due to his not following the scraping procedure on the hot presses. It did not state that it was a verbal warning, nor did it warn of further disciplinary action if the situation was not corrected. Discipline is supposed to be corrective and that principle was not followed in this case.

The Union also objects to the evidence submitted by the Company at the hearing that was not presented during the processing of the grievance, asserting the Union cannot respond to exhibits it had not seen before the hearing.

The Union requests that the grievance be sustained, the warning be ordered removed from the Grievant's personnel records and that the Grievant be made whole for all losses.

DISCUSSION

The stipulated issue is whether the Grievant was unfairly disciplined. It appears that the Union did not dispute the existence of the glue sinkers, rather, it argues that it was not the Grievant's fault and besides, no one has ever been disciplined before this for glue sinkers.

The un rebutted testimony of the Assistant Foreman in Repair and Patch and Nettekoven is that the one door with at least fifty glue sinkers in it was the worst they had ever seen. They also testified the other doors had 3 or 4 glue sinkers on them. It appears that the norm when doors are sent to Repair and Patch for glue sinkers is 1 or 2 glue sinkers on a door. It also appears from the testimony that the Masonite boards were only used to press two of the 7 or 8 doors found defective, so that even if the Grievant's excuse is accepted, that excuses only two of the doors.

The evidence establishes that the Grievant was trained on the Onsrud press in May or June of 1992; that he had been a press operator before being a Utility 1 operator, and that it is standard procedure on the presses to continually check the plates for glue sinkers. It does appear from the Grievant's testimony and that of another operator on the Onsrud, Wiese, that there were some problems seeing whether there was excessive glue on the Masonite boards when they were used, due to the dark color of the boards and the glue and the angle of the lighting. As noted, that would only excuse two of the 7 or 8 defective doors, albeit the worst of the bunch. It does appear, however, that no one else had a problem with the Masonite boards to the same extent as claimed by the Grievant.

Although the Grievant testified he did not remember being told on June 11th about glue sinkers, the Manager of the Detail and Patch Department, Mike Neumann, testified that he talked to the Grievant about it and memorialized the discussion in writing for the personnel records. The Union President testified he was not aware of verbal warnings having been given for glue sinkers, but conceded that the Union does not receive copies of verbal warnings. Neumann also testified that he had verbally warned others about being careful for glue sinkers before this, including one of the other operators on the Onsrud, Wiese. Neumann testified that he normally advised

employees that they were being verbally warned, but that does not appear to be the case with his discussion with the Grievant on June 11th. While Neumann's testimony that he previously discussed the problem of glue sinkers with the Grievant is credited, that discussion, at best, constitutes counseling about not following procedures. The discussion did, however, put the Grievant on notice that he needed to follow the checking and scraping procedures in order to avoid further problems.

It appears that the Grievant has had a substantially greater problem with avoiding glue sinkers than have the other operators on the Onsrud press and the operators on the other presses in the mill. 1/ It also appears that he was told by Neumann a couple of weeks earlier that he had "severe glue sinkers in several fire doors" because he was not following the scraping procedure. Given the extent of the disparity between the Grievant's problem with glue sinkers and that of the other press operators, the fact that he had recently been counseled about the problem, and the extent of the glue sinkers on the doors he pressed on June 22 and 23, it is concluded that the Grievant was not unfairly disciplined in this case.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 5th day of October, 1994.

By David E. Shaw /s/
David E. Shaw, Arbitrator

1/ Although there is some validity to the Union's claim that it cannot adequately respond to exhibits it did not see prior to hearing, it is noted that the Union did not object to the introduction of those exhibits at hearing, nor did it cite a contractual requirement that the parties exchange exhibits prior to hearing.