BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
IOWA COUNTY EMPLOYEES, LOCAL 1266, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO	Case 83 No. 52031 MA-8818
and	
IOWA COUNTY, WISCONSIN	

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Iowa County Employees, Local 1266, American Federation of State, County and Municipal Employees, AFL-CIO, referred to below as the Union.

Mr. Howard Goldberg, Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, 433 West Washington Avenue, P. O. Box 990, Madison, Wisconsin 53701-0990, appearing on behalf of Iowa County, Wisconsin, referred to below as the County or as the Employer.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Dennis McKernan, referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on March 23, 1995, in Dodgeville, Wisconsin. The hearing was not transcribed. The parties filed briefs and waived the filing of reply briefs by June 6, 1995.

ISSUES

The parties were unable to stipulate the issues for decision. I have determined the record poses the following issues:

Did the County have just cause, under Section 3.01 C), to

suspend the Grievant for three days based on his conduct on August 26, 1994?

If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE III - MANAGEMENT RIGHTS

3.01 The County possesses the sole right to operate the County and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

. . .

C) To suspend, demote, discharge and take other disciplinary action against employees for just cause . . .

BACKGROUND

The grievance challenges the County's response to a series of incidents which took place on August 26, 1994. 1/

In a form placed into the Grievant's personnel file sometime on or about August 26, Roger Venden, the County's Patrol Superintendent, checked the following entries to note the reasons for his sending the Grievant home without pay on August 26: Insubordination; Use of profane or abusive language; 2/ Leaving post without permission; Loafing or laxness on job: failure to perform assigned work; and Poor Performance. He did not issue a copy of this form to the Grievant.

Venden and Glenn Thronson, the Highway Commissioner, issued a letter, dated August 29, to the Grievant which stated the status of his discipline thus:

1/ References to dates are to 1994, unless otherwise noted.

2/ Venden added the word "intimidating" to this entry.

> The situation with you . . . has been developing since the first of August, culminating in the course of events on Friday morning August 26.
>
> The following is a list of rules which I feel were flagrantly violated, some on several occasions in the past three to four weeks.
>
> 1) Insubordination.
> 2) Making false, intimidating or malicious statements concerning other employees, supervisors, or highway department.
> 3) Conduct which disrupts work activities.
> 4) Loafing, loitering, sleeping, visiting, or engaging in unauthorized personal business.
> 5) Failure to observe the time limits of lunch, break, or wash up periods.
> 6) Poor Performance.
> 7) Failure to notify management of impending absence or tardiness (1/2 hour before starting time).
> 8) Abuse or misuse of county equipment.
>
> You . . . were sent home for the remainder of the day without pay on Friday, August 26, 1994, under Article II, Paragraph 3.01, item C of the Management Rights . . . from the collective bargaining agreement . . . Information regarding this situation will be forwarded to the Iowa County Highway Committee who meets on Tuesday, September 6, 1994 at 9:00 a.m. for further review and possible action in this matter.

The Highway Committee met as noted in this letter, and stated its conclusions in a letter, dated September 6, from its Chairperson, James C. Murn, to the Grievant which states:

> The Iowa County Highway Committee has met and decided that you will be suspended without pay for three days due to your threatening and intimidating conduct as referenced in the letter you received on August 29, 1994. The six hours you served on August 26, 1994 will be taken into consideration with the remaining two days two hours taken off upon mutual agreement between yourself and your supervisor.

> In case future problems of this nature occur, please be advised that possible termination of employment with the Iowa County Highway Department may be considered.

This prompted the Grievant's filing of the grievance.

The grievance form, dated "9-7-94," states the factual background thus:

> I was sent home for 1/2 day without pay by Roger Venden, time 9:30. I was told by him that he wasn't happy with my work performance that morning. Later in the office, after I repeatedly asked what the specific charge was going to be, he added leaving my post, insubordination, break violation, visiting and loafing as well as poor performance.

The balance of the background is best set forth as a summary of the testimony of Venden and the Grievant.

Roger Venden's Testimony

After assigning work on the morning of August 26, Venden noted the Grievant and Timothy Graber leaving the shop together in a pick-up truck. Venden had assigned each employe to work in different portions of the County, and decided to follow them. The Grievant drove to a convenience store, where he and Graber spent the next fifteen minutes while Venden watched from his car.

The Grievant and Graber then proceeded to Graber's work site, near an airport. Venden stopped on a County road about one-fourth of a mile from the two workers, watching them with binoculars. Venden had assigned Graber to mow the highway adjoining the airport, and Graber left the pick-up and proceeded to prepare his mower for the day's work. The Grievant loitered in the area, walking back and forth along the highway, then returning to his truck to drink coffee. After about one-half hour, the Grievant started his truck and left. He stopped his truck briefly to pick a road-kill off the highway. Venden had assigned the Grievant to patrol sections of highway, but this section was one Venden had assigned to Graber.

When the Grievant saw Venden's car approach, he walked over to see what he wanted. Venden confronted the Grievant with his observations, and noted he was unhappy with the Grievant's performance. The Grievant became "irate" and began to shout at Venden. He noted,

among other things, that he had remained with Graber at the airport because another crew worker was supposed to assist Graber. He ultimately stated to Venden that Venden could get another worker to pick Graber up and that he intended to go home after he got back to the shop. Venden asked why he was going home, and the Grievant responded that he was sick, emphasizing he was sick of being harassed. He then threw his shovel into the back of the pickup, got into the driver's seat, slammed the door and left the side of the road fast enough to throw gravel and "burn rubber." Several minutes later, the Grievant called Venden on the two-way radio and stated he would finish the section he was then patrolling.

Venden left the area and drove to inspect work at a site several miles away. He again saw the Grievant, who was driving his truck on County F. Because he had assigned the Grievant to patrol State Highway sections, Venden set off to stop the Grievant to find out what he was doing. He met the Grievant's truck coming in the opposite direction he had first observed him. Venden confronted him to determine what he was doing. The Grievant replied that he had observed a rummage sale sign posted on the County F marker at the intersection of County F and State Highway 39. He decided he should go to the sale to tell whomever posted the sign that it should be taken down. Venden told him he was again off the section he had been assigned to. The Grievant became upset and shouted at Venden. The Grievant repeatedly stated he was going to go home sick. When Venden told him he could not, the Grievant responded, "What are you, a Doctor now?" The Grievant then proceeded to the intersection and tore down the rummage sale sign.

Venden determined the Grievant was out of control, and should not be allowed to disrupt the work of anyone else. He followed the Grievant past the intersection of Highway 39 and County F, and observed the Grievant cleaning a road-kill off of Highway 39. He confronted the Grievant and told him to return to the shop and take the rest of the day off without pay.

After some arguing, the Grievant returned to the Dodgeville shop. Venden drove back to the section of highway in the Mineral Point area on which Graber was working. He discussed his concerns with Graber, then issued Graber a written warning. Graber signed the warning and no more was said between them.

Sometime after this, the Dispatcher called Venden, advised him the Grievant wanted a written statement on why he was being sent home, and would not leave until he got one. Venden drove back to the shop, proceeded into Thronson's office where he, Thronson, the Grievant and a Union representative, Von Hiller, met regarding the morning's incidents. Venden and the Grievant verbally sparred throughout this meeting, with the Grievant demanding a written statement of reasons for his being sent home and Venden taking the position that so much had happened that he wanted some time to review and document it all. The Grievant repeatedly yelled at Venden, ultimately taking the note pad on which Hiller was taking notes, signing it and demanding that Venden sign it. Venden declined to do so. The Grievant ultimately did leave, telling Venden as he left: "You're going to pay for this in the long run."

Venden wrote the August 29 letter during the weekend following these events. He also took the weekend to prepare a written summary of his observation of problems with the Grievant throughout the month of August, including those of August 26. That document states:

> This is a chronological record of incidents, conversation, and situations leading up to the suspension of (the Grievant) on August 26, 1994 for the remainder of the day without pay.
>
> August 2, 1994
>
> I met Dennis on his section at which time I informed him that he would not be getting paid for a sick day which had called in too late for. It has been a standing policy to call at least one half hour before your assigned starting time. Dennis has never been late calling in before and I was informing enough time before the end of the payroll period so he could possibly use a vacation day or floating holiday. He then became irate and verbally abusive over the matter. It even sounds like blackmail when he said, You either pay me for that sick day or I'll blow the top off that Henry Schaaf deal! That would not have hurt my feelings. The sick day was denied.
>
> August 3, 1994
>
> This morning Dennis was very quiet we talked about his work for the day and he left the shop. After getting out on the road he called in on the two-way radio to Jerry Olson, a grievance committee member, and asked him for 3 grievance forms. Personally I think this was uncalled for over the radio and I think it was only said to try to intimidate me in some way.
>
> Later that day we had some high winds and heavy rain in the area which caused some trees to blow down onto the roadway. Two men were dispatched to the first tree on Hwy. "80" at about 4pm approximately. The second report came in about 5:20 pm; Tree blocking 3/4 roadway 4 miles east of Hwy "23" on Hwy "130". One of the men from the previous call was in the shop making out his time slips. Although this was Dennis' section I decided to utilize the man standing there and call a second man from Dodgeville to cut my response time because of the nature of the call. Two men were on their way to the area in just over 10 minutes after the

second man was called.

August 4, 1994

Upon arriving to work on Thursday (the Grievant) immediately began questioning me on my handling of the tree situation the previous day. After a short discussion he again became quite irate and got to the point where he refused to do the work he had been assigned for that day. After a little more yelling I interrupted and told him to go and get his signs up and get the hell to work. At that time I turned and walked away.

Shortly after that I went up to the truck shed to give someone else some information. (The Grievant) again approached me and began yelling abusively about the same issues. After a short time he grabbed his chainsaw from the truck and set it down touching the toes of my shoes and told me to give it to someone else because he didn't need it anymore. He said he wasn't going to do that kind of work. He also said: "Or you can stick it [chainsaw] where the sun doesn't shine!"

. . .

Venden had been keeping these notes in handwritten form throughout the month. He noted, however, that he based the discipline on the events of August 26.

Venden acknowledged the County does remove rummage sale signs from highway signs. He added that such signs were typically not taken down until the sale was over or unless the sign obstructed a driver's view of the highway sign. The rummage sale sign torn down by the Grievant was roughly fourteen inches by sixteen inches with two balloons attached to it. Venden did not feel it obstructed the view of any highway sign controlling the intersection.

The Grievant's Testimony

The Grievant noted that Venden assigned him and one other employe to patrol all the State highway sections on August 26. Graber asked the Grievant to take him to his mower, and the Grievant agreed, since it was on the way to one of the sections he was to patrol. He and Graber stopped at a convenience store for a sandwich on the way to Graber's mower. They stayed ten to fifteen minutes, then proceeded to Graber's work site. He stayed with Graber while Graber set up his mower, then remained waiting for Graber's back-up worker to appear. Without the truck

driven by him, Graber had no access to a two-way radio. The Grievant waited for Graber's backup as long as he thought he could, advised Graber he was leaving, then proceeded toward his own section in the Mineral Point area.

The Grievant checked Graber's section on his way to his own section, since Graber had no truck to use. While picking up a road-kill on Graber's section, Venden approached him. He noted Venden stated his dissatisfaction with his work performance, to which the Grievant responded that if Venden was worried, he should worry about where Graber's backup was. The argument proceeded, and the Grievant told Venden he was sick of Venden's badgering, and would go home. He informed Venden he would claim sick leave because he was sick of being harassed. He then threw his shovel into the truck and left spinning his tires as he drove onto the highway. He testified he could not understand Venden's attitude since "I was doing what I would normally do."

After leaving Venden and proceeding onto his own section, the Grievant called in to advise Venden he would complete his patrol duties.

He next saw Venden as he proceeded down County F toward the intersection of County F and State Highway 39. He was stopped by Venden, who was proceeding on County F in the opposite direction. He advised Venden he was looking for the people who had posted the rummage sale sign to advise them they should remove it. Venden noted he need not do this, and was not on his section. Venden accused him of looking not for the people who posted the sign but looking for a chance to go to a rummage sale. He noted he may have raised his voice to Venden a couple of times. After their conversation he proceeded to the intersection and removed the rummage sale sign, because he could not find who posted it and the sign posed a potential liability issue for the County.

After leaving the intersection, he proceeded to continue his patrol duties, stopping to remove road-kill from Highway 39. Venden again confronted him, ordering him to report back to the shop and go home. The Grievant now became angered, and demanded written reasons for Venden's order. Venden declined to put his reasons in writing, stating, "I don't know, I'll have to think about it." Venden did state to the Grievant that the Grievant was guilty, among other offenses, of insubordination, poor work performance, and being off his section. He recalled Venden told him to go home about three times.

The Grievant then returned to the shop, "a little bit upset," put his truck away, and punched out. He did not refuse to go home. Ultimately, he, Thronson, Venden and Hiller had a conference on the morning's events. The Grievant felt he was on his own time, and had the right to insist on written reasons for being sent home. He acknowledged Venden verbally informed him that the reasons would include loafing, insubordination, being off his assigned section and poor job performance. Venden also added that more reasons would come. He also acknowledged grabbing Hiller's note pad, signing it and asking Venden to sign it. He was not yelling during this

conference. Venden never gave him any written statement of the basis for sending him home, but simply informed him to go home and let it rest.

The Grievant denied committing insubordination or any other impropriety on August 26. While acknowledging that his morning break is typically taken between 9:00 and 9:15 a.m., and that the convenience store was not on his section, the Grievant noted that Graber's section was on the way to his own and that the earlier break spared him the problems he would have in taking a later break in a truck transporting ripened road-kill. He acknowledged he was aware of County rules prohibiting parking a County truck in front of a restaurant.

Further facts will be set forth in the DISCUSSION section below.

THE COUNTY'S POSITION

The County states the issues for decision thus:

> Did the Employer have just cause to discipline the Grievant as to the events which took place on August 26, 1994? If not, what is the appropriate remedy?

After an extensive review of the testimony, the County notes that there is only one significant factual difference between Venden's testimony and the Grievant's. The County then asserts that even if the Grievant's account is credited "it is clear from the record that (the Grievant) deliberately disobeyed a significant number of rules, and his supervisor's instructions the morning of August 26." A review of the infractions acknowledged by the Grievant establishes, the County contends, that not only did it have just cause for its actions, "the matter was handled very well by Venden."

Noting that the Grievant was "insubordinate," "abusive to his equipment," and failed to perform his assigned tasks, the County adds that the Grievant also "totally disrupted Venden's day." The sum of this is, according to the County, that:

> Either the county work that (the Grievant) was assigned to perform had to be performed by others that day, or it simply was not done. Either way, the County lost.

The grievance asserts, the County notes, "that the Employer violated the just cause provision found in the labor agreement because the degree of discipline administered was not reasonably

related to the seriousness of the employee's offense." The County contends this assertion has no factual basis and that if the penalty is lessened, "the wrong message would be sent."

The County then argues timeliness issues are inextricably intertwined with the merits of the grievance. The County puts the point thus:

> It is the position of the Employer that, if the Arbitrator rules that the Employer did not have just cause to discipline Grievant for his actions on August 26, 1994, then all of the time that Grievant lost must be returned to him. If, on the other hand, the Arbitrator holds that the Employer did have just cause to discipline the Grievant for these events by sending him home for the rest of the day, without pay, then there would have been no violation of the just cause provision of the contract, and the Arbitrator need not consider the actions of the Highway Commission that were never grieved.

The County concludes that the grievance should be denied.

THE UNION'S POSITION

The Union states the issues thus:

> a) Did the Employer have just cause to suspend the grievant for six hours on August 26, 1994 and for an additional two days and two hours for events which took place on August 26, 1994?
>
> b) If not, what is the appropriate remedy?

After a review of the evidence, the Union notes that "the Grievant and Supervisor Venden have had a stormy relationship." Noting that "Venden testified that he sent the grievant home solely due to the events of Friday, August 26, 1994," the Union asserts that the evidence makes it "apparent that Venden sought to use the events of the 26th as an excuse to vent at least one month's worth of his own pent-up frustrations." This, the Union concludes, "suggests a substantial shortcoming in the Employer's case."

More specifically, the Union argues that the failure of Venden to act before August 26

indicates "that to some extent this type of behavior was tolerated." Beyond this, the Union notes that Venden never communicated to the Grievant that his conduct in August could lead to discipline. This type of notice is, the Union argues, "a fundamental component of just cause." Arbitral precedent, the Union asserts, requires notice of inappropriate behavior and notice of what discipline may flow from that behavior.

Beyond the issue of notice, the Union contends that "the Employer has largely failed to prove that the grievant was guilty as charged." The Union argues that three documents define the charges and that these documents are inconsistent with each other. The Union concludes: "The shifting sands of the Employer's accusations in this case imply a lack of certainty as to the real reason for the discipline." The evidence, the Union asserts, indicates Venden acted on impulse and thus inappropriately.

Beyond this, the Union argues that the charge of insubordination is "completely unsubstantiated." Nor is there evidence to support the assertion the Grievant made false or incriminating statements concerning any County employe or official.

Even if it is assumed these or other charges have been proven, the Union asserts that "a three day suspension is well beyond anything that might be said to be appropriate." Arbitral precedent links the severity of discipline both to the seriousness of the underlying conduct and to the disciplined employe's record of service. The Union contends the Grievant's length of service coupled with the weakness of the evidence against him makes the discipline too harsh. Beyond this, the Union argues that the discipline imposed here "amounts to double jeopardy and is not permissible under generally accepted standards of just cause."

The Union requests that the grievance be sustained and that the "Arbitrator order the Employer to make the grievant whole by paying to him an amount of money equal to 24 hours pay at his regular rate of pay, and, in addition, whatever additional payments that would have been made for him under the Wisconsin Retirement System were it not for his unjust suspension."

DISCUSSION

The parties' dispute on the phrasing of the issue for decision is, in many respects, the most fundamental issue between them. The Union's phrasing of the issue highlights its contention that the discipline constitutes double jeopardy. The County's phrasing of the issue appears to treat the discipline as a single matter, but the County argues that the Committee's action of September 6 constitutes a separate occurrence which the Grievant never grieved.

If the County's contention that the discipline involves two grievable occurrences of discipline is accurate, the Committee's action of September 6 would constitute the imposition of a second penalty for the same offense. Double jeopardy principles have been applied in arbitration,

3/ and could warrant considering the September 6 action a violation of just cause. The imposition of discipline less severe than discharge is a form of behavior modification. The discipline highlights inappropriate behavior, and by imposing a sanction on it provides a disincentive for the employe to so behave. Any sanction short of discharge permits an employe time to amend the behavior, thus providing an incentive for appropriate behavior. The imposition of two sanctions for the same offense substitutes gratuitous punishment for behavior modification. These concepts are relevant here, since Venden, as one of the Board's designated supervisors, is authorized to suspend. To permit him to exercise his authority as a sort of warm-up for further Committee action turns the discipline process into the running of a gauntlet.

The evidence will not, however, support the assertion that two grievable occurrences of discipline occurred on August 26 and September 6. The conversations of August 26 are difficult to reconstruct, but it appears that Venden and the Grievant realized that Venden was sending the Grievant home to stop further disruption of the work day, and to permit further review before possible further action. Any doubt on this point is addressed in the events which followed. Venden's letter of August 29 notes "this situation will be forwarded to the Iowa County Highway Committee . . . for further review and possible action . . ." Significantly, the Committee's September 6 letter did not treat the discipline as a separate action. Rather, the Committee noted: "you will be suspended without pay for three days . . ."

The issue for decision adopted above reflects that the County acted to impose on the Grievant a three-day suspension. The Union's attempt to separate the actions of August 26 and September 6 states a significant potential flaw in the County's position. On balance, however, the evidence establishes that Venden was taken aback by the Grievant's conduct on August 26, and sent him home to contain that conduct and to permit himself and his supervisors time to consider the disciplinary significance of the events of August 26. Deferring the determination of discipline allowed tempers to cool, and permitted time to further investigate. The investigation which followed was less than disinterested, and is properly questioned by the Union. The deliberations cannot, however, be dismissed as totally one-sided. The Grievant was afforded the opportunity to appear before the Committee before it acted. Thus, the time between August 26 and September 6 was directed to an assessment of the disciplinary significance of the Grievant's conduct of August 26. This factual background will not support a finding that the County sought to punish the Grievant twice for the same conduct.

The issue is, then, whether the County had just cause, within the meaning of Section 3.01 C), to suspend the Grievant for three days. The Union emphasizes two of the seven standards posited by Arbitrator Carroll Daugherty to define just cause. 4/ Those standards are not

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3/ See, generally, Practice and Procedure in Labor Arbitration, (BNA, 1991) at 301-304; and How Arbitration Works, Elkouri & Elkouri, (BNA, 1985) at 677-679.

4/ Enterprise Wire Co., 46 LA 359 (1966).

universally accepted, and in the absence of a stipulation by the parties, I am reluctant to imply them into the parties' agreement. In the absence of a stipulation, I believe a just cause analysis turns on two elements. First, the Employer must establish the existence of conduct by the Grievant in which it has a disciplinary interest. Second, the Employer must establish that the discipline imposed for the conduct reasonably reflects its disciplinary interest. This does not state a definitive analysis to be imposed on contracting parties. It does state a skeletal outline of the elements which must be addressed and relies on the parties' arguments to flesh out that outline.

Of the two elements, only the second can be considered in any doubt. The Grievant's testimony tracks, with one minor exception, Venden's. At a minimum, it is apparent the Grievant knowingly violated County policy by parking his truck at a convenience store. He then loitered at another employe's work site. He left that work site without proceeding to his own sections, then ended a disagreement with his supervisor by "burning rubber" in a County owned truck. He then proceeded to leave his assigned section again. Even ignoring whether the nature of his response to Venden constitutes insubordination or whether he was looking to attend a rummage sale on County time, the County has established the existence of conduct by the Grievant in which it has a disciplinary interest.

The issue thus turns on whether the three-day suspension reasonably reflects the County's disciplinary interest in the Grievant's conduct. To address this point, it is necessary to examine the disputed areas of conduct in greater detail. The Union accurately notes that Venden's August 29 letter broadened the County's disciplinary focus beyond the events of August 26. Items 2, 3 and 7 draw, at least in part, from Venden's notes covering the entire month. Whether or not the absence of discipline for pre-August 26 incidents indicates County willingness to tolerate the Grievant's excesses, none of those incidents has been proven. None of them can be given any weight in determining whether cause exists for the three-day suspension. That suspension must stand on the events of August 26.

The events of August 26 pose few factual disputes, and manifest egregious conduct on the Grievant's part. The Grievant's account of the events does not differ from Venden's in any significant respect. Rather, the Grievant's testimony challenges Venden's conclusions.

An examination of the Grievant's testimony does not, however, afford a basis to find his conduct anything other than outrageous. His testimony that he did nothing wrong on that date is, at most, creative. His attempt to rationalize stopping at the convenience store is less than a defense and dubious in any event. August 26 was, Venden noted, a clear day. Thus, there is no reason to believe Graber and the Grievant needed shelter for their break. The early morning break was a matter of the Grievant's convenience, not need. Nor can the violation be minimized. If the Grievant was concerned about eating before the truck was filled with road-kill, he had only to purchase the food and go to the work site. He did not do so, and the only plausible conclusion is that he did not do so to permit himself and Graber time to visit. That he loitered a considerable time after reaching Graber's work site makes untenable the assertion he had anything but his own

convenience in mind.

The Grievant's account of his loitering at Graber's work site is internally inconsistent and implausible. If Graber was expecting a co-worker to drive him to the work site, it is not apparent why this matter was not brought up at the shop. Presuming the lack of back-up was of concern to the Grievant, it is not clear why he never called the shop to identify the problem to management. If his or the radio's presence was a safety consideration for Graber's mowing, it is not clear why he left the site. That he left the site without calling in his safety concerns renders those safety concerns implausible.

The Grievant's account of his conversations with Venden unpersuasively understates the degree of anger involved in each. He could recall yelling at Venden on perhaps a couple of occasions during the entire day. That he left the first conversation spinning his tires and threatening to leave work is irreconcilable to this.

Nor is the Grievant's account of his wandering onto County F persuasive. If he had the liability concerns he claims motivated him to destroy the sign after failing to find who posted it, it is not clear why he left the hazard in place while looking for the sale.

Connecting the testimony to the August 29 letter establishes that the Grievant was guilty, in varying degrees, of seven of the listed offenses. The Union persuasively points out that the August 29 letter, apart from the pre-August 26 incidents, overstates some of the conduct involved. The insubordination involved in those events should not be over-stated. Venden tied the insubordination to the Grievant's refusal to go home. This ignores that the Grievant complied with the directive. It is also worth noting that the Grievant did not direct his comments or profanity to Venden personally. It is not, however, an abuse of the term to consider the Grievant's conduct insubordinate. Roberts' Dictionary of Industrial Relations defines "insubordination" thus:

> A worker's refusal or failure to obey a management directive or to comply with an established work procedure. Under certain circumstances, use of objectionable language or abusive behavior toward supervisors may be deemed to be insubordination because it reveals disrespect of management's authority. 5/

The testimony establishes that the Grievant yelled at, and spoke to, Venden in a fashion which manifests at least a degree of insubordination. The Grievant's conduct is less insubordinate than disrespectful. That another label is more appropriate to the offense cannot, however, obscure the underlying impropriety.

The second of the eight offenses appears to involve events preceding August 26. It appears the Grievant did attempt to intimidate Venden, but the degree of this intimidation is limited.

The third of the listed offenses has been demonstrated. Venden missed two appointments due to the Grievant's conduct. Graber's work day as well as the Grievant's was disrupted by the Grievant's unwillingness to perform his assigned duties.

The fourth, fifth and sixth of the listed offenses have been demonstrated, as noted above. The seventh is rooted in events preceding August 26 and cannot support the three-day suspension. The final listed offense has been demonstrated to a degree. At their first confrontation, the Grievant threw the shovel into the back of the truck, then spun the tires. The abuse of equipment involved is limited, but it remains noteworthy that the Grievant valued his anger more than his equipment.

The Union asserts that the offenses involved are exaggerated, and that the County failed to put the Grievant on notice of the disciplinary significance of his conduct. The point is well-

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5/ Third Edition, (BNA, 1986).

argued, but undermined by the Grievant's conduct. The precedent cited by the Union recognizes that certain offenses are of a nature that notice is not necessary. 6/ It is unpersuasive to conclude that the Grievant needed to be notified that he should not loiter on the job, should not wander from his scheduled sections, or should not take unauthorized breaks.

The Union also notes that discipline should take into account an employe's work record as well as an evaluation of the seriousness of the offense. The Grievant has worked for the County for thirteen years. This should not be minimized.

Ultimately, however, the Union's well-argued case is undermined by the evidence regarding the Grievant's conduct. It is apparent Venden had a reasonable basis to dismiss him from work on August 26. His conclusion that the Grievant was out of control is supported by the evidence. What complications exist in this case turn on the double jeopardy concerns addressed above and on whether the additional two days can be said to serve a reasonable purpose. The propriety of reducing the suspension turns on whether a lesser suspension could reasonably be expected to convey the disciplinary signal appropriate to the conduct involved. In other words, the two days of suspension added by the Committee should reflect gratuitous punishment to be overturned. In this case, however, the Highway Committee reviewed a record of an employe who committed repeated violations without assuming responsibility for any of them. The violations undermined Venden's authority for no reason beyond the Grievant's personal convenience. This is not to say a supervisor's authority is unassailable. It is vital, however, to weigh the significance of the supervisor's exercise of authority against the interests defended by the employe. In this case, the Grievant rebelled against his supervisor's attempt to make him do his job. The Committee's conclusion that action beyond the suspension from work on August 26 was necessary to underscore the need for the Grievant to modify his conduct cannot be dismissed as unreasonable in light of the offenses involved. In sum, the County has proven both elements comprising just cause.

AWARD

The County did have just cause, under Section 3.01 C), to suspend the Grievant for three days based on his conduct on August 26, 1994.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 28th day of August, 1995.

By Richard B. McLaughlin /s/

6/ 46 LA at 363.

Richard B. McLaughlin, Arbitrator