

## BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

MIDWESTERN INDUSTRIAL COUNCIL  
LOCAL UNION 2190, UNITED BROTHERHOOD  
OF CARPENTERS &  
JOINERS OF AMERICA

and

MARSHALL ERDMAN & ASSOCIATES, INC.

Case 9  
No. 52484  
A-5356

### Appearances:

Mr. Michael Kenny, Business Agent, on behalf of the Union.

Melli, Walker, Pease & Ruhly, S.C., by Mr. Thomas R. Crone, 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 on January 18, 1996, in Madison, Wisconsin. The hearing was not transcribed and the parties thereafter filed briefs which were received by January 29, 1996.

Based upon the entire record and the arguments of the parties, I issue the following Award.

### ISSUE

The parties have agreed to the following issue:

*Did Grievant Donald J. Hoffman violate the Company's safety rules  
and, if so, what discipline should be imposed?*

### DISCUSSION

The Company's Watertown, Wisconsin, plant employs about 320 employees. Forklift Operator Hoffman has been employed there for about 23 years, during which time he was never disciplined.

On March 7, 1995 1/, Hoffman used a forklift to move a 225-pound pallet near the end of

his shift. He then stopped working and left the forklift forks in an upright position, about 2 feet over a cart used to transport plastic. Hoffman went to punch out before the first quitting time buzzer went off at 3:57 p.m., contrary to the Company's plant rules which prohibit employees from leaving their work stations before that buzzer rings. As he did so, he met Manager of Machinery David Lynch at the time clock, who had earlier observed his unattended forklift with the forks up. Lynch asked him why he had left the forks raised on the forklift. Lynch testified that Hoffman replied, "The shift ended". When Lynch pointed out that the buzzer had not yet sounded and that he could not leave the forklift in that position, Hoffman replied that the second shift "would be able to figure out what to do."

Production Manager Paul Duren testified that Hoffman violated the Company's plant rule which states that forks must be on the ground when the operator is not using it and that this marks the first time that he has seen such a situation. Duren testified on cross-examination that he did not know whether the brakes on the forklift were on; that he does not know if employees always remove keys from the fork lifts when they are not being used; that another employee once was demoted after hitting a heater; and that if the forks on Hoffman's forklift fell, they would land on the cart.

For his part, Hoffman testified that he never received any prior forklift training which addressed leaving the forks up; that he thought that the forks on March 7 were on the table, but that they were not; that no one could have been injured because of that situation; that he knew that an employee on the next shift would move the forklift and thereby alleviate the situation; that "there is no assigned place to park fork lifts"; that no other employees have been disciplined for leaving forks up "even though it happens quite often"; and that employees regularly leave keys in the ignition, contrary to Company policy. He also denied that Lynch told him on March 7 to move the forklift.

Hoffman acknowledged on cross-examination that he did not know whether management had personal knowledge regarding other employees who left their forks up on prior occasions; that he was in a hurry on March 7 to pick up his wife because of "bad weather" and that was why he quit working before the buzzer sounded; that Lynch "seems to have it in for me"; that "I wish I had taken the time to take care of it"; i.e., park the forklift; that he does not think that he created an unsafe condition; and that he erred when he wrote in a subsequent March 9 statement that he left at 3:57 p.m., and that the forks were only "inches" off the cart.

The Company on March 8 suspended Hoffman for three (3) days, hence leading to the instant grievance.

In support thereof, the Union basically asserts that the Company "seems to be trying to make an example of a twenty-three (23) year employee"; that the Company in the past has not uniformly enforced its safety rules; that the Company has failed to prove that Hoffman created a dangerous situation; and that the Company failed to properly communicate its plant rules to

Hoffman. The Union therefore asks that Hoffman be made whole by paying him three (3) days' pay and by expunging the suspension from his record.

The Company, in turn, contends that the grievant's "version of the incident is not credible"; that his suspension was proper because "there is no evidence of disparate enforcement of the rules"; that Hoffman created a situation which may "cause employees to be exposed to hazard or injury"; and that the three-day suspension was appropriate "under all the circumstances".

I agree with the Company. Thus, there is no proof that the Company in the past was aware of those instances testified to by Hoffman regarding lax enforcement of the Company's safety rules. Furthermore, the Company has the iron-clad right to insist that unattended forks be lowered even if there is little chance of injuring others since that requirement has been established by the Occupational Safety and Health Administration and since the Company does not have to wait for actual injuries or a safety citation before it enforces its plant rules. Moreover, Hoffman as an experienced forklift driver either knew or should have known of this requirement via his attendance at a prior 1989 safety meeting. His failure to follow that rule therefore is ample grounds for discipline.

In addition, the record shows that Hoffman rushed to leave work on March 7 so that he could pick up his wife and that he refused to move the forklift when told to do so by Lynch - whose testimony I credit in its entirety. As a result, he was entirely responsible for the situation that day and he must pay the price for not following the Company's legitimate safety rules.

In light of the above, it is my

#### AWARD

That Grievant Donald J. Hoffman violated the Company's safety rules and therefore deserved his three (3) day suspension.

Dated at Madison, Wisconsin, this 20th day of March, 1996.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator