

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
LOCAL LODGE 1855 OF DISTRICT 150

and

KRC HEWITT, INC.

Case 47
No. 52774
A-5378

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, by Mr. Frederick Perillo, appearing on behalf of the Union.

Godfrey & Kahn, S.C., Attorneys at Law, 333 Main Street, Suite 600, P. O. Box 13067, Green Bay, Wisconsin 54307-3067, by Mr. Dennis Rader, appearing on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the Company, respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing was held on September 8, 1995, in Neenah, Wisconsin. The hearing was transcribed. Afterwards, the parties filed briefs and reply briefs, whereupon the record was closed December 15, 1995. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Was there just cause for the disciplinary suspension of Joe Wilfling?

If not, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1994-1997 collective bargaining agreement contains the following pertinent provisions:

ARTICLE XI
Discharge

Section 1. No employees will be discharged, disciplined, or suspended without just cause.

Section 2.

. . .

. . . If it is determined that the employee has been disciplined too severely, payment of back pay, if any, for time found excessive shall be made. . . .

. . .

WORK RULES

. . .

There are three levels of violations of these work rules:

Level 1 - Violations will result in immediate termination if it is determined an employee has violated one or more of these rules.

. . .

Level 2 - Violation will result in suspension and/or termination.

. . .

2. Disobedience or gross insubordination.
3. Willful or reckless destruction or damage to company or customer property.

. . .

Level 3 - Any work rule violated in this category will result in disciplinary action:

1. First offense - written/verbal warning.
2. Second offense - written warning.
3. Third offense - one day suspension.
4. Fourth offense - employee subject to suspension or termination.

Rules falling into this classification are as follows:

. . .

4. Negligence resulting in substandard products, inferior work, the breaking of tools, damaging of equipment or wasting of supplies.

. . .

FACTS

The Company is engaged in the business of servicing and refurbishing rollers that are used in the paper industry. One piece of machinery that is used in its operations is an industrial lathe known as the "L-12." A lathe is a machine on which a piece is spun on a horizontal axis and shaped by a fixed cutting tool. The instant disciplinary grievance involves the L-12, so a detailed description of its set-up follows.

The L-12 is much larger than a woodworking lathe and takes several hours to set up. The metal roll that is in the L-12 is approximately 20 feet long and 30 inches in diameter. The roll weighs several tons and must be lowered by crane into the bed of the lathe. The roll rests horizontally on the lathe bed. It is held in place on either end by what is referred to as the head stock and the tail stock. The tail stock has to be fixed in place by tightening large bolts. Once a roll is placed properly between the head and tail stocks, the roll spins at high speed while a cross slide runs the length of the roll to shape the roll according to specifications. If the tail stock is not properly tightened in place, the roll will not be properly aligned in the bed and may shift slightly along the length of the bed. This improper alignment can occur because the weight of the roll pushes against the loose tail stock forcing it up and away from the bed and slightly to one side. Because of the length and width of the roll, though, the slight variance in position would be impossible to detect by the naked eye. When this happens, the grooves made by the cutting blades (saw blades) will not conform to the specifications for the job being run.

Once the job is set up on the L-12, there are several tests that a machinist can perform to ensure that the roll is properly situated on the lathe. The test pertinent here is called longitudinal indication. That particular test is used to ensure that the roll has been properly centered between the head and tail stocks and is leveled. Put another way, longitudinal indication is a test that is

used to ensure that the roll will spin on center once the lathe is running. The longitudinal indication process is done as follows. It involves running a spring-loaded gauge down the length of the roll from one end to the other to check the tolerances. A dial on the gauge shows, to a tolerance of a one thousandth of an inch, whether the roll is centered between the head and tail stocks. Thus, the gauge detects minor variances in the position of the roll which are not otherwise visible. A longitudinal indication is often taken as the final step in the set-up process to ensure that the roll is properly centered on the lathe. This process takes several minutes to complete. It (i.e. the longitudinal indication process) does not involve loosening or tightening bolts. The record indicates that some of the Company's machinists do not perform the longitudinal indication as part of the set-up process on the L-12.

On January 30, 1995, third shift supervisor John Kalinsky assigned employe Gordon Dain to set up a job on the L-12 lathe. Dain was a new employe who had never set up the L-12 before. Dain spent the last half of the third shift working on this assignment. When the shift ended, Dain had completed about half of the set-up.

When Joe Wilfling reported to work the next morning (January 31, 1995) for the first shift, he was assigned to finish the set-up on the L-12 which Dain had begun on the previous shift. Wilfling is a journeyman machinist with 20 years experience with the Company. The first shift supervisor, Greg Siebers, knew that Dain had never done this job before so he wanted to ensure that the L-12 was set up properly. He therefore told Wilfling, who he knew had extensive experience setting up this exact job on the L-12, to thoroughly double check the entire set-up on the L-12 because it had been started by an employe who had never done this job before. To make sure that Wilfling understood the assignment, Siebers repeated it a second time. After doing so, Siebers asked Wilfling whether he (Wilfling) understood that he was to completely recheck the entire set up, and Wilfling replied that he did. Siebers knew from personal knowledge that Wilfling was very capable of double checking the set-up on the L-12 because Wilfling had trained him (Siebers) to operate that machine years ago. Siebers also knew from personal knowledge that Wilfling normally performs the longitudinal indication as part of the set-up process on the L-12.

In the course of checking the set-up on the L-12, Wilfling ran a test of the machine using a cardboard collar around the roll near the head. In doing so, he discovered that the cutters were improperly spaced. After he discovered this cutter-spacing error, he corrected it by repositioning the cutters. This was the only set-up error he found and corrected. He then commenced the actual cut on the roll. When the cutters had proceeded about halfway down the roll, Wilfling discovered that the cutters were grooving the roll too deeply.

About 12:45 p.m., Wilfling told Siebers there was a problem with the grooving pattern on the roll. (This meant the roll was not being cut according to specifications.) When Siebers investigated what was causing the problem, he discovered that the tail stock had lifted up off the lathe bed. The roll was therefore rotating off center, causing the cutting heads to cut grooves that were not to specifications. The reason the tail stock had lifted off the lathe bed is that it (i.e. the

tail stock) had not been tightened down. After discovering this, Siebers asked Wilfling if he had checked the tail stock before he started and Wilfling replied no. Siebers then exclaimed: "God dammit Joe, I told you to check this shit" whereupon Wilfling replied: "Yeah, yeah, I know. I'm not going to argue with you. I didn't." What had happened is that Wilfling failed to discover that the tail stock had not been tightened down before he started grooving the roll. This error was not an obvious error that could have been discovered by visual inspection or by checking the tightness of the bolts. This error in the set-up process could have been discovered though if a longitudinal indication had been performed. Wilfling did not perform this test.

Later that afternoon Siebers wrote up the above-noted incident in narrative form on a Company document entitled "Employee Warning Record." Siebers wrote the following:

At 7:15 am on 1/31/95 Joe Wilfling was given a job in L-12 to groove a roll. Joe was told by Greg Siebers that the job had to be completely checked over for setup because it was started by Gordon Dain and he had never done this job before. Joe made a comment about the setup & understood what he had to do & why. At 12:45 pm Joe informed me that there was a problem with the grooving pattern. I went out and looked at it & found the grooving pattern got progressively worse & that the groove depth started at .125 & the middle was approx. 1/4" depth. We found the tail stock had lifted off the ways and the roll was not set straight in the lathe. I asked Joe if he checked the tail stock before he started and he said no. I said to Joe, God dammit I told you to check everything before start up. Joe told me that he didn't disagree with what I said. He admitted that I told him to do so and he would not argue about it.

The Company's "Employee Warning Record" form has a section entitled "Employee's Remarks Re: Violation." That section states: "(t)he absence of any statement on the part of the employee indicates his/her agreement with the report as stated." Wilfling, who is the union steward, chose not to make any statement or comment on the form in response to Siebers' account of the incident.

Wilfling was subsequently suspended for three days without pay for the above-noted incident. When Plant Manufacturing Manager Gerald Poss suspended Wilfling, he indicated that Wilfling's conduct violated work rule level 2, #2 and #3 and work rule level 3, #4. The suspension was grieved. At no point during the processing of the grievance did Wilfling dispute Siebers' account of the matter contained in the "Employee Warning Record," or deny that he failed to discover when checking the set-up that the tail stock was not tightened. Insofar as the record shows, Wilfling has no previous discipline on his record.

Wilfling was not present at the hearing and, as a result, did not testify. The Union indicated that the reason Wilfling did not attend the hearing was due to the unexpected hospitalization of his wife immediately before the hearing. Both sides chose to proceed with the hearing without Wilfling being present.

The record indicates that the Company has previously suspended employes for violating work rule level 2, #2 and #3. Jerry Riehl was suspended in 1987 for violating (major) work rule #2 (i.e. "disobedience or gross insubordination") when a lathe he set up damaged a roll. William Gerhardt was suspended in 1989 for violating (major) work rule #3 (i.e. "willful or reckless destruction or damage to company or customer property") when the machine he set up was damaged. Mel Goffard was suspended in 1994 for violating work rule level 2, #2 (i.e. "disobedience or gross insubordination") when a job he ran was rejected. All three of these employes were suspended for three days. All of their suspensions were grieved but none went to arbitration.

POSITIONS OF THE PARTIES

Union's Position

The Union's position is that the Company did not have just cause to suspend Wilfling. In the Union's view, the Company is unjustly and wrongly blaming Wilfling for the accident which occurred. According to the Union, the inadequate set-up work was done on a prior shift by a trainee (Dain) and his supervisor (Kalinsky). The Union argues that the Company wants to blame someone for this mistake and Dain is not available for the role because he is no longer an employe and Kalinsky is a member of supervision. The Union asserts that Wilfling is therefore being made the "fall guy" for what occurred.

The Union acknowledges at the outset that Wilfling was indeed told to "check things out" (i.e. to check Dain's work). It contends it is not clear though what this instruction meant. It therefore characterizes Siebers' order as highly discretionary and ambiguous. It notes in this regard that this instruction did not suggest Wilfling should start the set-up over again from scratch, nor did Siebers specifically tell Wilfling to check the tail stock. The Union views Siebers' ambiguous work instruction as an attempt to abdicate managerial responsibility over whether the set-up job should be started over and to force employes to become insurers of the Company's normal business risk. The Union further believes that Siebers' order implied that Wilfling should use his skills as a journeyman machinist to check the fine details that a trainee might miss. According to the Union, he did check the details. The Union asserts that only with the advantage of hindsight is the Company now able to say that Siebers' instruction to "check things out" included taking the roll out of the bed and tightening the tail stock (i.e. redoing the entire job from scratch). The Union cites the testimony of its two witnesses (who are both journeyman machinists

and one a former Company supervisor) for the proposition that the

instruction to "check things out" would not include these things. The Union argues that under these circumstances, some clear indication was needed that he was supposed to tighten the tail stock before Wilfling can be blamed for Dain's mistake.

The Union contends that the Company's attempt to hold Wilfling accountable for Dain's set-up mistake via three work rule violations should be rejected. It notes for background purposes that Wilfling was charged with the following three work rule violations: disobedience/insubordination, willful/reckless damage and negligence. With regard to the first, the Union contends that Wilfling is not guilty of disobedience or insubordination because he did what he was told to do--he checked the details of the set-up. The Union avers that when he did so, he discovered that the cutters were spaced improperly. In the Union's view, the fact that Wilfling caught and corrected this mistake proves that he did check the job thoroughly. That said, the Union admits Wilfling failed to discover Dain's other set-up error (that the roll had been centered without tightening the tail stock). According to the Union this was not an obvious error, nor one that could have been discovered by visual inspection, nor even by checking the tightness of the bolts. The Union again cites the testimony of its two witnesses for the proposition that it was not reasonable to expect Wilfling to have discovered the particular error committed by the trainee in this case (i.e. that the roll had been centered without tightening the tail stock) without breaking down the job and redoing it entirely. The Union therefore contends Wilfling took all the steps that could reasonably be expected of a journeyman machinist under the circumstances. The Union also argues that Wilfling was neither reckless nor negligent (the other two work rule violations Wilfling was charged with). The Union submits that just because damage ultimately occurred does not mean Wilfling was the one who was negligent. According to the Union, the better and more probable explanation is that the Company should have more clearly supervised Dain when he set up the machine at the start. The Union acknowledges that when Wilfling rechecked Dain's work, he (Wilfling) assumed the tail stock was tightened. The Union asserts it was not negligent for him to assume this (i.e. that the tail stock was already tightened) because "it is difficult to believe anyone could omit this step of the set up." The Union therefore argues that the Company failed to prove that Wilfling was guilty of any offense at all.

Finally, responding to the Company's contention that Wilfling's guilt should be assumed because he did not testify, the Union argues Wilfling had no duty to testify against himself.

The Union therefore requests that the grievance be sustained and Wilfling made whole for all losses suffered.

Company's Position

The Company's position is that it had just cause to suspend Wilfling. The Company notes at the outset that Wilfling was specifically instructed by his supervisor to check the entire set-up before running the job. The Company asserts this was a reasonable directive under the

circumstances (the circumstances being that Siebers was concerned that the trainee on the previous shift may not have properly set up the job). The Company contends there was nothing ambiguous or discretionary about the work instruction which Siebers gave. To support this premise, the Company notes that Siebers twice told Wilfling that he was to go through all the details of the set-up job, and Wilfling replied that he understood. The Company therefore asserts Wilfling was given clear, direct and specific instructions to check the entire set-up and he understood those instructions.

The Company submits that the unrefuted evidence shows that Wilfling failed to properly check the set-up of the lathe as he was directed to do. It cites the following to support this contention: the fact that Wilfling admitted to Siebers after the accident occurred that he failed to thoroughly check the set-up prior to running the job, the fact that he did not offer any excuses for this wrongdoing, and the fact that Wilfling failed to offer any rebuttal statement on the "Employee Warning Record" form to the charge against him. Responding to the Union's contention that Wilfling did check the job, the Company contends that just because Wilfling found the cutter spacing error does not mean that the job was thoroughly checked. It avers it was not.

The Company also argues that the Union's contention that Wilfling needed to take apart the whole set-up and start again from scratch in order to comply with Siebers' directive to check everything is just not so. According to the Company, all Wilfling had to do was indicate the roll. The Company notes that Wilfling normally performs the longitudinal indication when he sets up a job on the L-12 to determine whether the roll is properly aligned. The Company asserts that here, though, for reasons known only to Wilfling, he did not perform the longitudinal indication. The Company submits that had he done so, he would have detected the misalignment of the roll on the tail stock.

The Company also argues that the arbitrator should reject the Union's argument that Wilfling should not be held responsible for the accident because double checking the entire set-up of the lathe is not normally part of the ordinary standard procedure. The Company asserts that the question here is not what the normal or usual standard of care is for a journeyman machinist, or whether it is normal to go back to the step in the process that involves tightening the tail stock. In its view, the question is whether Wilfling followed Siebers' directions to check the set-up thoroughly. To support this premise, it acknowledges that under normal circumstances a machinist would not be expected to recheck all the details of a set-up started by another machinist. It avers that the instant situation was not a normal situation. That being the case, it believes that the "expert testimony" of the two journeyman machinists about what a journeyman machinist is normally expected to do deals with a factual situation different from that herein.

Finally, the Company calls the arbitrator's attention to the fact that the grievant did not testify at the hearing. The Company asks the arbitrator to draw a negative inference from this that the grievant's testimony would have been damaging to his case.

With regard to the level of discipline which was imposed, the Company believes a three-day suspension was appropriate because Wilfling's conduct caused the very damage the Company was trying to prevent when it told him to double check the entire set-up. In its view, the degree of discipline which it imposed was reasonably related to the seriousness of the offense, and the Union has not presented any evidence of disparate treatment. The Company also cites the three suspensions noted in the record for work rule violations to support the appropriateness of the penalty in this case. The Company therefore contends the grievance should be denied and Wilfling's suspension upheld.

DISCUSSION

Article XI, Section 1 of the parties' labor agreement contains what is commonly known as a "just cause" provision. It requires that the Company have just cause to discipline employees. In this case, the Company suspended an employee (Wilfling) for three days. The question to be answered here is whether the Company had just cause within the meaning of Article XI, Section 1 for doing so.

As is normally the case, the term "just cause" is not defined in the parties' labor agreement. While the term is undefined, a widely understood and applied analytical framework has been developed over the years through the so-called common law of labor arbitration. That analytical framework consists of two basic elements: the first is whether the employer demonstrated the misconduct of the employee and the second, assuming this showing of wrongdoing is made, is whether the employer established that the discipline imposed was contractually appropriate.

As just noted, the first part of a just cause analysis requires a determination of the employee's wrongdoing. Attention is now turned to making that call.

Just one witness, Siebers, testified concerning the incident in question. Wilfling was not present at the hearing and both sides opted to proceed without him. Given his absence, he obviously did not testify at the hearing. While the Company asks the arbitrator to draw a negative inference from this that his testimony would have been damaging to his case, the undersigned declines to do so. The undersigned has no reason to dispute the Union's assertion that the reason for Wilfling's non-appearance at the hearing was his (Wilfling's) wife's sudden and unexpected hospitalization. That said, Wilfling's failure to testify at the hearing does mean that Siebers' testimony concerning the incident in question was un rebutted. Consequently, the operative facts are undisputed.

Those facts are as follows. On January 30, 1995, employee Dain was assigned to set up a job on the L-12 lathe. Dain was a new employee who had never set up the L-12 before. When his shift ended Dain had completed about half of the set-up job. When Wilfling reported to work he

was assigned to take over the set-up job on the L-12 which Dain had begun on the previous shift. The first shift supervisor, Siebers, knew that Dain had never set up the L-12 before so he wanted to ensure that it was set up properly. He therefore told Wilfling, who he knew had extensive experience setting up this exact job on the L-12, to thoroughly double check the entire set-up on the L-12 since it had been started by an employe who had never set it up before. Siebers repeated the assignment a second time to ensure that Wilfling understood the assignment. Wilfling replied that he understood. Wilfling then began checking the set-up on the L-12. In doing so, Wilfling discovered that the cutters had been improperly spaced. After he discovered this cutter spacing error, he corrected it by repositioning the cutters. This was the only set-up error he found and corrected. He then commenced the actual cut on the roll. When the cutters had proceeded about half way down the roll, Wilfling discovered there was a problem with the grooving pattern on the roll (specifically that the cutters were grooving the roll too deeply so that it was not being cut according to specifications). Wilfling told Siebers about the problem. When Siebers investigated he discovered that the tail stock had lifted up off the lathe bed and the role was rotating off center. The reason the tail stock had lifted off the lathe bed is that it (i.e. the tail sock) had not been tightened down. After discovering this, Siebers asked Wilfling if he had checked the tail stock before he started and Wilfling replied no. Siebers then exclaimed: "God dammit Joe, I told you to check this shit" to which Wilfling replied: "Yeah, yeah, I know. I'm not going to argue with you. I didn't."

The Union contends at the outset that the order which Siebers gave Wilfling (i.e. to thoroughly double check the entire set-up) was highly discretionary and ambiguous. My discussion on this point begins with the premise that if Siebers' work order was ambiguous or if Wilfling had a question about what he was to do, it is logical to assume that he (Wilfling) would have raised a question about it or asked for a clarification. In this case Wilfling did neither. To the contrary, he specifically told Siebers that he understood what he had been directed to do (i.e. to thoroughly double check the entire set-up of the L-12). When considered in the context it was given, Siebers' order meant Wilfling was to check each and every step of the set-up process. Said another way, he was to recheck everything. He was not to take anything for granted or make any assumptions that certain steps in the set-up process had been completed. For example, he was not to assume that the tail stock had been tightened, even though that is an early (and basic) step in the set-up process. Since Wilfling had extensive experience in setting up the L-12, he knew what to do and how to do it. Moreover, Siebers told Wilfling why it was necessary in this particular instance to recheck everything on the set-up, namely because the person who had started the set-up on the previous shift had never done it before. Obviously, if an experienced person had started the set-up, as opposed to a new employe, this admonition would have been unnecessary. Siebers gave the admonition because he wanted to make sure that the set-up was done properly so that the roll was grooved according to specifications.

When Wilfling began rechecking the set-up, he found and corrected one error which Dain had made, namely that the cutters were not spaced properly. The Union contends that this shows that Wilfling thoroughly rechecked the set-up. I disagree. In my view, all this shows is that

Wilfling found and corrected one error. His finding this one error though did not relieve him of his obligation to recheck the set-up further. If there were more errors he was still obligated to find and correct them.

However Wilfling failed to find and correct a second error which Dain had made, namely that the tail stock had not been tightened down. This error admittedly could not have been discovered by either visual inspection or by checking the tightness on the bolts. This particular error could have been discovered though if Wilfling had done a test called the longitudinal indication. Siebers testified that Wilfling usually did a longitudinal indication on the L-12 before he started grooving a roll. Here, though, for some unknown reason, Wilfling did not do the longitudinal indication before he started grooving the roll. The testimony of the Union witnesses indicates that the longitudinal indication is not always done. Be that as it may, in this particular instance where Wilfling had inherited a partially finished set-up job which had been begun by a new employee who had never done the set-up before, and where he had been told to recheck everything, Wilfling should have done the longitudinal indication. If he had, he would have discovered that the tail stock had not been tightened down. Since Wilfling did not do the longitudinal indication and the roll was not cut to specifications, the undersigned believes the Company had a legitimate beef with Wilfling's job performance on the day in question. The damage which was caused to the roll was the very damage the Company tried to prevent in the first place by having Wilfling double check the entire set-up before he started grooving the roll.

The Company contends that by failing to discover that the tail stock had not been tightened before he started grooving the roll, Wilfling violated three Company work rules. These alleged work rule violations are addressed below.

One charge leveled against the grievant is that he violated Company work rule level 2, #2. That rule provides that "disobedience or gross insubordination" will result in suspension and/or discharge. The problem with applying this particular work rule to the instant facts is that Wilfling did not disobey Siebers' work order. As previously noted, he was told to thoroughly recheck the set-up of the L-12. In point of fact, he did check the details of set-up before he started to groove the roll. Thus, he did what he was told to do. That said, the real question is how thorough Wilfling was in checking the set-up. The record indicates that Dain made two mistakes in the set-up: he spaced the cutters improperly and he did not tighten the tail stock down. Wilfling caught and corrected the former but not the latter. Wilfling's failure to find Dain's second mistake was certainly not intentional. Additionally, Wilfling did not do anything that could be considered insubordinate (such as refusing to comply with Siebers' work order), much less constitute "gross insubordination." It is therefore held that while Wilfling's failure to tighten the tail stock in this particular instance can be characterized in a variety of ways, it is not accurate to characterize it as involving "disobedience or gross insubordination." That being so, it is held that Wilfling did not violate Company work rule level 2, #2.

Another charge leveled against Wilfling is that he violated Company work rule level 2, #3.

That rule provides that "willful or reckless destruction or damage to company or customer property" will result in suspension and/or discharge. The problem with applying this particular work rule to the instant facts is that Wilfling did not "willfully" damage the roll. By that, I mean he did not deliberately set out to damage the roll on the L-12 by failing to tighten the tail stock. Additionally, in the opinion of the undersigned, Wilfling did not do anything during the set-up that qualifies as "reckless." It is therefore held that while Wilfling's failure to tighten the tail stock in this particular instance can be characterized in a variety of ways, it is not accurate to characterize it as involving "willful or reckless destruction or damage to company or customer property." That being the case, it is held that Wilfling did not violate Company work rule level 2, #3.

The remaining charge leveled against the grievant is that he violated Company work rule level 3, #4. That rule provides that "negligence resulting in substandard products, inferior work, . . . (and) damaging of equipment" will result in progressive discipline (i.e. a warning, followed by suspension, followed by discharge). In my view, this work rule fits what happened here like the proverbial glove. When Wilfling checked the set-up done by Dain he assumed that the tail stock was already tightened. Under normal circumstances that assumption would have been acceptable since, as the Union puts it in their brief, "anyone with even a small modicum of common sense will tighten the tail stock prior to lowering several tons of weight upon it." However in this particular instance Wilfling should not have assumed that the tail stock was tightened given Siebers' express order to recheck everything that Dain had done. Since Wilfling made this assumption in contravention of the order he had been given, it is held he was negligent in rechecking the set-up work which Dain had done. This negligence resulted in a "substandard product and inferior work" since the roll on the L-12 was damaged. It is therefore held that Wilfling violated Company work rule level 3, #4.

In summary then, it is held that the Company has not substantiated its contention that the grievant violated work rule level 2, #2 and #3, but that it has substantiated its contention that the grievant violated work rule level 3, #4. Since the grievant violated work rule level 3, #4, it follows that he committed a disciplinable act. The Company therefore had just cause to discipline him for committing a level 3 work rule violation.

The second part of a just cause analysis requires that the Employer establish that the penalty imposed was contractually appropriate. Said another way, the punishment must fit the misconduct. The Company argues that its suspension of the grievant meets this burden. I disagree. As a practical matter, my finding dismissing the two level 2 charges against the grievant has the following ramifications. First, this finding means that the Riehl, Gerhardt and Goffard suspensions which the Company cites to support the appropriateness of the penalty in this case have no bearing here because those three employees were all suspended for level 2 violations (or what used to be known as "major" violations). Here, though, no level 2 violation has been found. Second, this finding means that the grievant's misconduct here did not warrant an automatic or immediate suspension (as is the case with level 2 violations). That said, the grievant's violation of a level 3 work rule could still warrant a suspension if the grievant was at that step of the

progressive disciplinary system expressly incorporated into level 3. Under that system, an employe has to have a written warning (i.e. a second offense) in effect before a suspension can be imposed. Insofar as the record shows, the grievant had no prior discipline or misconduct standing against his record. That being the case, the undersigned finds that the appropriate level of discipline for the grievant's level 3 work rule violation under the disciplinary sequence for level 3 violations was a written/verbal warning. Since the Company skipped this

step here and proceeded instead to a suspension, it failed to comply with the disciplinary sequence it has contracted to abide by. Consequently, the grievant's suspension is overturned and his discipline is reduced from a three-day suspension to a written/verbal warning.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

There was just cause for disciplining Joe Wilfling for failing to thoroughly check the L-12 lathe on January 31, 1995. The appropriate measure of discipline under the circumstances though for this negligence was a written/verbal warning. The Company shall reduce Wilfling's three-day suspension to a written/verbal warning for violating work rule level 3, #4, and shall make him whole for any losses.

Dated at Madison, Wisconsin, this 6th day of May, 1996.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator