

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

TEAMSTERS, LOCAL NO. 75

and

THE VILLAGE OF ALLOUEZ

Case 37  
No. 52884  
MA-9137

Appearances:

Mr. David J. Condon, Attorney at Law, 801 East Walnut Street, P.O. Box 1656, Green Bay, Wisconsin 54305-1656, appeared on behalf of the Village.

Ms. Ruth E. Canan, Attorney at Law, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appeared on behalf of the Union.

ARBITRATION AWARD

On August 4, 1995, the Wisconsin Employment Relations Commission received a request from Teamsters Local No. 75 and the Village of Allouez to appoint William C. Houlihan, a member of the Commission's staff, to hear an arbitration pending between the parties. On August 30, 1995, the Commission appointed the undersigned to hear and decide the matter. An evidentiary hearing was conducted on September 28, 1995, in Allouez, Wisconsin. The proceedings were not transcribed. Briefs were submitted and exchanged by October 24, 1995.

This arbitration addresses the discharge of employe B.K.

BACKGROUND AND FACTS

Prior to his discharge, in July of 1995, B.K., the grievant, was employed by the Village of Allouez as a special equipment operator for a period of approximately 13 years. The grievant appears to have been a good worker, as evidenced by his performance evaluations, with an attendance problem. Over the years, B.K. has missed a substantial amount of work due to personal health and family circumstances. The grievant suffers from allergies, particularly with respect to mold, which cause his eyes to swell shut, cause him to sneeze, and afflict him to the extent that he sometimes cannot see to drive. He has suffered this condition for the entire duration of his employment with the Village. The grievant testified that he normally uses all of his 12 annual sick leave days, 3 personal days and some portion of his vacation, due to his allergies. He further testified that due to the sudden onset of allergy symptoms it is difficult for him to give significant advance notice of his requests for time off.

In November of 1984, the grievant's mother died. At that time, the grievant approached

Dave Waffle, the Village Administrator, and requested funeral leave. The grievant expressed concern because he believed he lacked the requisite time to cover his anticipated leave. Waffle told him to take the time and attend his mother's funeral. The grievant indicates that Waffle additionally instructed him not to worry about it, that they would take care of things. Both Waffle and the grievant indicated there was no reference to potential discipline accompanying the taking of his leave. The parties stipulated that at the time of his mother's funeral, the grievant lacked 2 1/2 hours sick leave to cover the leave taken, which was 24 hours. Initially, the Village did not pay for two days (16 hours) of the 24 hours of leave taken. Additionally, on November 28, 1994, the grievant was issued the following warning letter by Dave Waffle:

On November 18, 21 and 22, 1994, you took time off for the purpose of attending your mother's funeral. We regret her passing and express our sympathies once again. However, you did not have any accumulated leave time available and were not paid for two of the three days.

This is a warning letter about a pattern of absenteeism. Much of your vacation was taken early in the year. This year, you had eight unexcused sick leave absences some of which were not paid, according to the contract. In 1993, I know you similarly ran out of sick leave and wanted time off.

This letter will remain in the file according to contract provisions and may be used as the basis for subsequent disciplinary action.

The warning letter was grieved. On December 12, 1994, the grievant filed the following grievance:

I received a warning letter for using three day sick leave to attend my mother's funeral. I had prior authorization from Dave Waffle, knowing I did not have 24 hours of sick leave. I had 21 1/2 hours. I was paid for my time off, except for 2 1/2 hours I was short. Dave Waffle approved the time off the day before my mother's death. This letter should be withdrawn from my file. Dave Waffle knew I would be off for my mother's death. He also knew I did not have enough time.

The Village corrected the error in payment for the sick leave. That is, it paid the grievant all but 2 1/2 hours of the leave taken. However, the Village refused to remove the disciplinary letter from the grievant's file.

On June 21, 1995, Mike Williquette, Union Business Representative, sent Waffle the

following letter:

I am writing in response to your letter dated June 9, 1995 regarding a letter of discipline which you state will stay in B's file. If that is in fact your final position, then I would like this letter to also be placed in B's file and to be taken into consideration should your discipline letter be used in any future discipline proceedings.

In our meeting of January 6, 1995, I thought we cleared up the miscalculation of available paid for time B had left on the books, in fact, B had accumulated time available to him on the date in question which he had cleared through you to attend his mother's funeral. The fact still remains that B has a disabling disease that has forced him to miss work and use up his sick leave and this should have been taken into consideration when his mother died.

Again, I would like to reiterate that should these letters be under consideration during any future discipline procedure, it should be noted that the union remains opposed to the letter referenced in B's file.

On May 31, 1995, the grievant's wife was due to be discharged from a local hospital. At approximately 6:30 a.m. the grievant called his foreman, Chuck Rybicki, and requested use of a vacation day, so that he could care for his wife. Rybicki was without authority to grant a vacation day on such short notice and told the grievant to call Tom Meier, Director of Public Works. Sometime between 8 and 8:30 a.m. the grievant reached Meier, and requested a vacation day. Meier responded that he couldn't grant the request, that such a request had to be in writing and submitted in advance. Meier told the grievant to call him back later and allow Meier an opportunity to talk to Dave Waffle.

Meier called Waffle and explained the grievant's circumstance, which included the fact that the grievant had no personal leave left in his account, but did have vacation. A personal leave may be taken without advance notice. There is a minimum two-day notice requirement for vacation use. Waffle refused to approve the request. Meier indicated that he called the grievant back, informed him that his request was denied, and directed him to come to work. The grievant's testimony was that Meier called him back, and indicated "B, why do you always dig yourself in a goddamn hole. Your vacation is denied. You are on unexcused absence." The grievant did not come to work on May 31st. It was his testimony that his wife required attendance, and there was no one but him available to stay with her.

On June 1, 1995, the grievant was given a memo which scheduled a pre-disciplinary meeting for June 8, 1995. The memo advised the grievant that he was entitled to union

representation and to the opportunity to provide further information regarding his absence on Wednesday, May 31. It also provided as follows:

. . .A warning letter was placed in your file on November 28, 1994 regarding time off for your mother's funeral without accumulated leave time available.

You have consistently used most of your vacation, comp. and sick leave time early in the year. As you well know, in a notice to you dated May 16, 1995, you still had 9 days vacation left, 0 personal leave days, 0 sick leave hours and 0 comp. time hours available to you. The policy of the Village is that all vacation requests are to be submitted to the employe's department head on the absence report form "greenie". This policy was not followed prior to the requested day of vacation leave.

You continue to show the same pattern of absenteeism as before and we consider this a matter of grave concern. Therefore, disciplinary actions may be taken which range from suspension to discharge.

Following the June 8 meeting, the Employer concluded that no new information with respect to the absence was forthcoming, and by memo dated June 16, 1995, suspended the grievant from work without pay for three days beginning Tuesday, June 27 through and including Thursday, June 29, 1995.

On July 11, 1995, the grievant filed the following grievance with respect to his three-day suspension:

"I received three days off without pay on June 27, 28, 29. I called Tom Meier on the morning of May 31st to use one of my vacation days. Due to my wife's health it was mandatory I take this day off to care for her. In the past, other employes have received time off on short notice for similar situations. I feel that by Tom Meier denying my vacation request and taking disciplinary action is more of a personal decision.

"On May 30th, my wife was treated at Beaumont Clinic and Bellin Hospital. On May 31st I called Tom Meier at work to request a vacation day. My wife's recurring health problems made it essential I stay home to care for her."

The grievance was denied the next day, July 12, by Meier in a memo which provides as

follows:

"This notice is to advise you that your grievance filed on July 11, 1995 regarding suspension without pay on June 27, June 28, and June 29, 1995 is denied because the grievance was not filed in a timely manner.

"Article 17.02 specifically states: 'Any employee desiring an investigation of his/her discharge, suspension or warning notice must file his/her protest with the union and the Employer within five (5) days exclusive of Sundays or holidays, of the date the employee receives such discharge, suspension or warning notice. The protest must be filed in writing.

"Your official notice of disciplinary action informing you of being suspended from work without pay for three (3) days was dated June 16, 1995."

The grievant had a week's scheduled vacation beginning Monday, July 3rd. This is the week following the week in which the disciplinary suspension was imposed. Early on the morning of Thursday, June 22nd, the grievant submitted a vacation request for two days, June 26 and June 30. The request came on the official form (this green-colored form is known as a "greenie" by the parties). Tom Meier was on vacation at the time and did not return until Tuesday, June 27. Dave Waffle was at a conference, and away from work, and did not return until after 3 p.m. on Friday, June 23rd. It appears that in the absence of Meier and Waffle, there was no one else in a position of authority to approve or deny a vacation slip. 1/

Employees assume that once a vacation request is made, it will be approved unless they are told to the contrary. To that end, all witnesses who testified indicated that the passage of two days from the request for a vacation without a denial constitutes a granting of the vacation. That is, employees are not required to await formal approval of requested vacation in order to take the vacation they have sought.

Waffle returned to the Village on Friday, June 23rd sometime after 3:00 p.m. The grievant's work day ends at 3:00 p.m. Waffle checked Meier's mail that afternoon and discovered the "greenie". His immediate reaction was to deny the vacation request. Waffle and Meier had

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1/ It appears that a public works foreman named Bors worked on Friday, June 23rd. The record is unclear as to whether Bors has the authority to grant vacation requests and if so, if he can do so outside the Water Department. The record does indicate that Bors did not see the "greenie" until Monday, June 26.

discussed this very circumstance shortly after the June 8 disciplinary hearing. They had anticipated a potential request for a Monday and Friday vacation and had concluded they would deny any such request insofar as they regarded it as converting a disciplinary suspension to a recreational period. Their conclusion in this regard had not been communicated to either the grievant or any of the appropriate foremen.

By the time Waffle discovered the grievant's leave request, the grievant's work day had ended and the grievant had left. At approximately 4:00 p.m., Waffle called the grievant's home and was greeted by the grievant's teenage daughter who advised him that her father and mother were away and would be returning later. Waffle indicated that the grievant's request for vacation was denied. The grievant testified that his daughter is instructed to advise callers with whom she is not familiar that her parents are returning shortly. As a matter of fact, the grievant's wife was transporting him to a friend's house where the two men were scheduled to depart for a week-long camping trip. The grievant's wife returned home alone.

After his telephone conversation with the grievant's daughter ended, Waffle wrote, "not approved" across the grievant's vacation request, addressed that document to the grievant, and placed it in the Friday mail. It was Waffle's testimony that he accomplished this task in time for the document to go out in the Friday mail.

The grievant and his friend, who drove, left for Rhinelander that Friday afternoon on a camping trip. The two men camped on the lot of a friend, 12 miles north of Rhinelander. There was no telephone available. The next night, Saturday, the grievant called home and talked to his daughter. She indicated that someone from work had called and that his vacation for Monday was cancelled. Following his conversation with his daughter, the grievant called Mark Roffers, a union steward. The grievant advised Roffers of his situation, that he was in Rhinelander without transportation back to work, and that his vacation had been cancelled. The grievant advised Roffers that he could not get to work on Monday, that he had no transportation, and asked "What should I do?" Roffers replied, "Do what you gotta do." In a subsequent conversation on Monday, June 26, Roffers summarized his Saturday night conversation with the grievant to Waffle.

It was the grievant's testimony that while in Rhinelander, he had no money, and never thought about the possibility of taking public transportation (a bus) home. He did not believe he was in a position to impose upon his camping friend to bring him home in time to go to work Monday. He did not call any management person from Rhinelander.

The grievant called home again on Tuesday, June 27, in the mid-morning. He testified that his daughter was suffering severe depression, and that his wife was having trouble coping with their daughter and he determined to come home early and help his wife. When he explained his dilemma to his camping friend, his friend drove him home and he arrived home on Tuesday.

Upon his arrival at home on Tuesday, June 27 at around 5:00 p.m., the grievant indicated that things were hectic around his home, that his daughter was troubled, and that he became so immersed in his troubled family situation, that he never thought to call the Village. The grievant indicated that he understood his Saturday night conversation with his daughter to be that Monday, but not Friday, vacation was cancelled. He acknowledges receipt of the "greenie" on either Wednesday or Thursday of the week. It was his testimony that he likely received it on Thursday, that he saw that his vacation was not approved, but that given the difficulty of his home environment, he simply never thought to call the Village or to come to work on Friday.

Upon his return to work from his vacation, on Monday, July 10, the grievant was given a notice of suspension from work with pay effective that same day. He was also provided with notice of a disciplinary meeting to be conducted at 9:00 the next morning, Tuesday, July 11. The next day the grievant was suspended without pay following a pre-disciplinary meeting. The suspension was for his failure to report to work on June 26 and 30. He was further given notice that the Village Board would meet on Tuesday, July 18 to consider additional disciplinary action, possibly including dismissal.

On July 14, the grievant filed a grievance which states as follows:

The Village was given the proper notice for vacation time I requested. The Village did not deny my request in the two working days I gave them. They waited until I was already gone out of town, then they left a phone message with my 17-year old daughter, saying they were cancelling my vacation.

The Village had the proper notice for vacation request. The Village was not short on manpower at this time, only four employees off, including myself. This was done to make me suffer as much as they could. This was done on a personal basis and not because of the workload.

At its July 18 meeting the Village Board voted to dismiss the grievant for his various absences without authorization. That decision was communicated to the grievant by memo dated July 19, 1995. The Board acted upon the recommendation of Mr. Waffle. Mr. Meier was also present at the Village Board meeting but was not asked his view as to the propriety of just cause and did not offer it.

ISSUE

The parties stipulated to the following issue:

*Was there just cause for the unpaid suspension beginning July 11, and subsequent discharge? If not, what is the appropriate remedy?*



RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE II  
MANAGEMENT'S RIGHTS

The Village retains management rights to direct and supervise the work of its employes; discipline and discharge employes for just cause; and, direct and control operations, schedule hours of work and assign duties, and issue and amend reasonable work rules.

. . .

ARTICLE VIII  
VACATIONS

Vacations shall be scheduled so as to meet the operating requirements of the Village of Allouez and, as far as practical, the preferences of the employes. Vacation leaves with pay may be used only with the prior approval of the department head.

ARTICLE XI  
SICK LEAVE

9.01 Each regular employe of the Village will accumulate sick leave with pay at the rate of one (1) working day for each month of service up to a maximum accumulation of one hundred twenty (120) days. An employe may use sick leave with pay for absences necessitated by injury or illness of themselves or exposure to contagious disease, required dental care, doctor appointments and death in immediate family. Periods of documented admitted hospitalization shall be excluded from counting as an instance for this provision. Also, funeral leave and doctor/dentist appointments shall not be counted as an instance.

. . .

9.03 Employes whose sick leave accumulation exceeds seven hundred and twenty (720) hours as of December 31 of any year shall be eligible for an additional eight (8) hours pay during January of the following year. Employes whose sick leave exceeds eight hundred and twenty (820) hours as of

December 31 of any year shall be eligible for an additional twelve (12) hours pay during January of the following year.

. . .

ARTICLE XVII  
DISCHARGE

17.01 The Employer, through the appropriate supervisor (department head or other non-unit supervisor), shall not discharge or suspend any employe without just cause. The Employer shall give at least one warning notice to an employe in writing, with a copy to the union. No such warning need be provided before an employe is discharged due to dishonesty, being under the influence of intoxicating beverages while on duty, illegal use of controlled substances or other flagrant violations. The warning notice provided herein shall not remain in effect for a period of more than nine months from date of said warning. Discharge or suspension shall be in writing, with a copy to the union and to the employe affected.

POSITIONS OF THE PARTIES

The Village recites the facts underlying this dispute and concludes that it is clear that the grievant lacked approval to take vacation on June 26 and June 30. On the Saturday preceding those dates, he knew he lacked this approval yet made no effort to contact the Village after he was advised that his vacation request was denied, and that he made no effort to obtain transportation to return to the area or otherwise appear for work either on that Monday or Friday. Furthermore, he had returned to town prior to June 30 and had no excuse for not reporting to work.

Waffle's testimony shows that he did not know what the operating needs would be in the Street Department for the week of June 26, and did not want to grant vacation to the grievant.

The Employer contends that there is nothing in the labor agreement, in policy, or in practice which indicates that vacation is automatically granted if the employe is not notified to the contrary by 3:00 p.m. of the workday following the date that an employe submits his request. The grievant's actions disregarded the labor agreement's provision that vacations shall be scheduled to meet the operating requirements of the Village, and that vacation leaves with pay may be used only with the prior approval of the department head. The grievant could have been present for work on June 26, and on June 30, but chose not to. This followed a pattern of absenteeism and

his general disregard for the needs of the Village in the past.

It is the view of the Village that the grievant disregarded the management rights of his Employer and of the Village's need to have sufficient manpower available to perform its operations. He showed himself to be not dependable, and to completely disregard the specific directions given to him by the Employer.

The Union also reviews the facts underlying this dispute and concludes that the suspension and discharge violated the just cause provision of the parties' agreement. The Union contends that the Village is at fault, characterizing its behavior as a classic case of abuse of power. The Union contends that the Village is angry because the circumstances of the grievant's life has caused him to have to use sick leave, personal leave and vacation leave time available to him despite the fact that the Village has bargained for, and offers this time as a benefit for all of its employes.

The Union contends that the Village's reliance upon a scheme of progressive discipline in this dispute is not only misplaced, but rather evidences the Village's own culpability for the underlying circumstances of the grievant's suspension and discharge in this matter. For instance, rather than tell the grievant straight out that he would not be allowed to schedule vacation time around his suspension time, or that any such request would be refused, the Village first approved his vacation request then denied it after he left on his vacation.

The Union contends that the Village's conduct is arbitrary. The Village relies upon formal procedure only when such a procedure benefits its position. For instance, the Village refused to allow the grievant to take May 31 as a vacation day solely because he had not given the two-day advance notice. When the grievant's mother died, Waffle authorized the grievant's use of funeral leave time notwithstanding the fact the grievant informed him that he may not have enough time in the sick leave bank to cover the funeral leave, and then subsequently disciplined the grievant for taking off the two and one-half hours leave time, a technical violation. In contrast, Waffle and the Village seek to bind the grievant to Waffle's denial of the grievant's vacation request despite Waffle's lack of adherence to procedure in denying the vacation and the Village's initial approval of the vacation.

The Union contends that the Village considered impermissible factors in deciding to discharge the grievant, and wrongfully failed to consider his exemplary work record and tenure. The Union points to Article XVII, Discharge, which provides: "The warning notice provided herein shall not remain in effect for a period of more than nine months from date of said warning." The November 28, 1994 warning letter was issued based upon the grievant's exceeding two-and-one-half hours of leave time available to him at the time he took his funeral leave. The letter also referenced a prior "pattern of absenteeism". The Village Board's consideration of the "pattern of absenteeism" referenced in the November 28, 1994 warning was impermissible, given that no evidence of that pattern was documented in the letter. Additionally, the warning letter was in error in noting that he lacked two days of leave. The Village Board's consideration of this erroneous

fact is alleged to be defective. The Union contends that the Village Board's consideration of any undocumented "pattern of absenteeism" preceding a nine-month limitation in the collective bargaining agreement and the two whole days vs. two and one half hours was impermissible. Finally, the Union contends that Waffle's testimony that the Village Board did not consider the grievant's length of employment and his exemplary performance evaluations resulted in a decision which is per se lacking in just cause.

The Union contends that the Employer's effort to deny the grievant's vacation request was void. The Union argues that the Village has not met its burden of proof that its denial of the grievant's request was reasonable in light of operational needs. The Village's after-the-fact of approval attempt at denial is void. Any discipline of the grievant based upon the attempted denial of vacation is therefore unreasonable and violative of just cause.

The Union argues that the suspension and discharge violates the vacation and discharge and discipline provisions of the contract. The Union argues that the contract describes discipline in the form of warning notices, suspension, or discharge. It does not provide that discipline may be meted out through a reduction of the vacation and sick leave benefits provided by the agreement. The testimony of Waffle to the effect that he denied the grievant's vacation request in part because Waffle was concerned about manpower and unsure of who else would be taking off on the 26th and 30th, is incredible. Both Waffle and Meier testified that as of approximately June 1, the time they scheduled the grievant's suspension, it was a foregone conclusion that they would deny any vacation request the grievant might make that surrounded his suspension days. The Union concludes that the Village sought to discipline the grievant by limiting his vacation benefits under the collective bargaining agreement.

The Union acknowledges that the grievant may arguably have been engaged in a self-help remedy by failing to call the Employer once he learned that his vacation had been disapproved. However, the Union characterizes the grievant's behavior as not unnatural or unreasonable given the Village's glaring violation of his vacation rights and its prior treatment of him at the time of his mother's death. The Union concludes that the Employer lacks cause for the discharge.

## DISCUSSION

The Employer contends that this discharge is the culmination of a series of progressive discipline steps. It is accurate that progressive discipline was imposed, and that neither the written warning nor three-day suspension are before me. Notwithstanding that fact, the union argues that the quality of those disciplinary measures are an appropriate consideration in this proceeding. I believe that to be true. To fail to at least examine the prior discipline leading to this discharge would inject a level of artificiality into the analysis underlying this dispute. The grievant was not fired for a single incident or transgression. This discharge occurred in the context of the entirety of his work record and attendance history. The Employer acknowledges as much in its own determination to discharge, which was at least in part predicated upon the grievant's attendance

record.

I find the written warning issued in November, 1994 disconcerting. This disciplinary step followed upon the death of the grievant's mother, and came after he appears to have explained his circumstances and secured prior authorization to take the leave that he ultimately took. From the Village perspective, this incident does not stand alone. It no doubt represents the culmination of long-term Employer concern over the grievant's absenteeism. Notwithstanding that fact, all things considered, this strikes me as a particularly poor vehicle upon which to commence discipline.

I think this warning sends a confused message. The employe involved is one who has trouble managing his leave. This man uses a considerable amount of leave time, and is seemingly unable to give the desired level of advanced notice. In this instance, he did manage to anticipate his leave of absence needs, his lack of sick leave time, and brought those problems to his supervisor. After being told to take the leave, he thereafter found himself subject to discipline. The Employer insisted upon maintaining the discipline even after the correction of a substantial computational error in the level of sick leave. I think the message sent the grievant was a confusing one.

However, the letter was not grieved, and whatever its quality, it stands as discipline imposed.

The three-day suspension arose under circumstances of personal stress for B.K. While I do not second guess the grievant's need to be with his wife on May 31st, it seems to me that at least some advance notice could have been provided the Employer. The record indicates the grievant's wife was hospitalized prior to May 31. There is no indication that the grievant advised the Employer of the possibility/likelihood that he would need to take leave upon his wife's release. I find this lack of notice disturbing in light of the grievant's prior history of leave utilization. The Employer was concerned about the amount of leave the grievant took and the short notice which accompanied much of that leave. This is something the grievant, after his many years of service, and his heavy utilization of sick leave, should have been keenly aware of. This is particularly so following the warning letter.

As noted, the propriety of the three-day suspension is not before me. It stands as a disciplinary measure.

The Employer argues that the grievant did not have approval to take vacation. The Employer argues that nothing suggests an automatic granting of vacation under the circumstances presented by this dispute. I disagree. All evidence in this proceeding is to the contrary. All witnesses testified that requests for vacation are deemed granted if not denied within the two-day notice. When the grievant left work on Friday at 3:00 p.m. he had secured *de facto* approval of his requested vacation.

Both parties behavior was short-sighted with respect to this vacation leave. The grievant, who was admittedly concerned about the propriety of his leave request, put his request slip in at the last moment. He initiated no discussion of the request. In such a small operation, I suspect he knew that Meier would be on vacation, and may well have known that Waffle was away from the Village offices. Waffle and Meier had anticipated the possibility that the grievant might seek to use vacation to surround his disciplinary suspension days, and determined that any such request would be denied. This was done well in advance of the actual request. That decision was not communicated to the grievant. It was in this context that both men were away from the workplace June 22 and 23. While the Employer was certainly under no obligation to affirmatively inform the grievant that a vacation request, not yet made, would be denied, one of the two men should either have communicated that fact to the grievant, or to someone in a position of authority to look for and deny a request should it come in. There were more prudent courses of action available to both parties in this dispute.

However, once the grievant had left the work site on Friday at 3:00 p.m. he was under no obligation to make himself available for a subsequent telephone call cancelling his vacation. Similarly, the grievant is not on constructive knowledge that his vacation was cancelled by virtue of the fact that the Employer had communicated that to his daughter. Nothing in the record suggests that the grievant was on call status, after 3:00 p.m. Friday. He was free to go camping in an area where he could not be reached. However, by Saturday night, he did know that the Employer had attempted to cancel his vacation. He did not contact the Village. He explains that he was out of town and lacked a telephone; however, he called home twice, and managed to call his union steward. I believe he both could have called and that he should have called the Employer.

It was the grievant's further testimony that he was without transportation while camping. I find this testimony suspect. The Employer introduced evidence that there was bus service between Rhineland and the Allouez area. Additionally, I find it difficult to believe that the grievant's friend would not have transported him home in the face of a job crisis. When a family crisis arose on Tuesday, the grievant did secure a ride home from his friend.

The grievant arrived home on Tuesday, June 27. The Employer notes that he was both at home and in receipt of the denial of his vacation request no later than Thursday, June 29. The Employer contends that there is absolutely no excuse for his not appearing at work on Friday, June 30. The Union contends that the Village's attempt to rescind previously granted vacation is void, and renders any subsequent discipline as a result of that initiative equally void. Without deciding what right this Employer has to cancel a previously-scheduled vacation, or what effort a vacationing employe is required to make upon being advised that his pre-scheduled vacation has been cancelled, it appears to me that at an absolute minimum some response from the grievant was warranted. The grievant was at home from Tuesday, the 27th through the balance of that work week. He had been advised orally, and in writing, that the Employer was cancelling his vacation request. His failure to at least telephone the Employer to ask why his vacation had been cancelled

and/or reiterate a request for vacation, or explain his circumstances, reflected horrible judgment on his part.

Once again, the grievant's behavior is explained by his family circumstances. That may explain, but in my mind does not condone, the lack of a phone call to his employer. While it may well be that the grievant was immersed in a familial crisis, the fact remains that he was at home for the majority of a work week, aware of the fact his employer had withdrawn his vacation approval, and did not so much as contact his employer. The effect was that on Saturday, June 24th, the grievant discovered that his vacation for the 26th and 30th had been denied. This was confirmed by a letter received no later than Thursday, the 29th. Yet there was no effort to contact the Employer until not only the disputed vacation days had passed but also the vacation scheduled for July 3 through 7 was over, and the grievant returned to work on July 10.

The Employer argues that Waffle did not want to compromise the manpower needs of the Department by granting vacation. Staffing needs of the Department had nothing to do with the denial of the grievant's vacation request. Waffle testified that he and Meier had previously decided that should the grievant request vacation on the days surrounding his suspension, that vacation would be denied. The men made a conscious decision that they would not allow a disciplinary suspension to be converted into a recreational period. This had nothing to do with manpower. When he became aware that the grievant had requested vacation, Waffle acted quickly to attempt to deny that vacation request. There is no indication he looked into the staffing levels or called foremen or others knowledgeable as to the work requirements of the Department to see whether vacation was appropriate. To the contrary, all evidence was to the effect that the manpower levels were such that under normal circumstances, vacation would have been granted.

In my view, no one approaches this proceeding with entirely clean hands. The grievant has a history of substantial sick leave use, which has been long tolerated by the Employer. The Employer determined to address what it perceives to be a problem. However, it picked a bad place to start, and, in my judgment, mishandled the incident. With respect to the three-day suspension, I believe the grievant faced compelling circumstances. However, there is no suggestion that he did anything to mitigate the workplace problems he created when he called seeking vacation with no notice.

Discharge is the most severe employment consequence. This is particularly true when it is applied to a long-term employe, regarded as a good worker. Under such serious circumstances, where the Employer is predicating discharge in significant part upon the grievant's failure to come to work following a denial of his vacation request, I believe the Employer has a responsibility to actually communicate the denial of the vacation request to the employe before the vacation commences. Had the grievant not called, and subsequently come home, there would have been no actual communication of the Employer's vacation denial.

The grievant is not without fault. He could have, and he should have, called the

Employer. He could have asked for vacation on Friday, and explained the circumstances that required his presence at home that week. If ordered in, he was subject to a "work now, grieve later" standard. The grievant chose not to follow this common sense course of action. Instead, he relied upon self-help.

But for two mitigating circumstances, I would sustain his discharge. The first, is that the grievant was called home to help his wife in what was described as an extraordinarily difficult family crisis. He testifies that he was preoccupied by the needs of his family and that his "head was someplace else". It was in this context that the grievant exercised his judgment. The second circumstance that I find to be relevant is the mindset created by the initial written warning. There, under difficult personal circumstances, the grievant did come forward and make known both his needs and his concerns. The resulting discipline would hardly contribute to open lines of communication.

#### AWARD

The grievance is sustained.

#### REMEDY

This discharge is reduced to a 30-calendar day unpaid suspension. The Employer is directed to reinstate the grievant and, with the exception of the 30-day suspension, to make him whole for losses incurred due to the discharge. Such make-whole relief includes compensation for regularly-scheduled straight time wages lost, benefits, and seniority. The Employer is directed to change the grievant's work record to reflect a 30-day suspension. The Employer is entitled to offset its liability by any interim earnings or unemployment compensation monies, if any, received by the grievant.

I will retain jurisdiction over this matter for a period of 30 calendar days to resolve any disputes as to the remedy.

Dated at Madison, Wisconsin, this 18th day of July, 1996.

By William C. Houlihan /s/  
William C. Houlihan, Arbitrator