

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

UNITED STEELWORKERS OF AMERICA
LOCAL 9040

and

ALTO-SHAAM, INCORPORATED

Case 1
No. 54394
A-5510

Appearances:

Mr. Douglas Drake, Staff Representative, United Steelworkers of America, Local 9040, 2525 North 124th Street, #205, Brookfield, Wisconsin 53005, representing the Labor Organization.

Mr. James C. Schalow, Labor Representative, Alto-Shaam, Inc., W164 N9221 Water Street, Menomonee Falls, Wisconsin 53052-0450, representing the Employer.

ARBITRATION AWARD

The United Steelworkers of America, Local 9040 ("the Union"), and Alto-Shaam, Inc., ("the Company"), are parties to a collective bargaining agreement which provides for final and binding arbitration of certain disputes arising thereunder. On August 22, 1996, the Union made a request, in which the Employer later concurred, that the Wisconsin Employment Relations Commission appoint a member of its staff to serve as Arbitrator to hear and decide a dispute over the application and interpretation of the terms of the agreement relating to discipline. The Commission appointed Stuart Levitan to so serve. Hearing on the matter was held on November 21, 1996, in Menomonee Falls, Wisconsin. A transcript of the proceedings was made available to the parties by November 27, 1996. The parties filed written argument by January 13, 1997. The Employer filed a reply brief on February 24, 1997. The Union waived its right to file a reply brief.

ISSUE:

The parties state the issue in generally similar terms. I frame it as follows:

Did the Employer have cause to impose a three-day suspension of the grievant for violation of a Group III Work Rule for the events of April 16, 1996? If not, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS

SECTION 4 - MANAGEMENT RIGHTS

Except as expressly limited in this Agreement, any and all management functions are specifically reserved to the Company. Said management functions shall include, but are not limited to, management of the Company and the direction of the work force, the right to plan and direct and control all operations, the right to hire and relieve employees from duty because of lack of work or other legitimate reasons, the scheduling of work, the selection of salaried employees, the determination of working hours, work assignments, quality requirements and the right to establish reasonable production requirements, where work shall be done and the number of shifts, the making of reasonable shop rules for the government of the Company and the right to establish or change or introduce new or improved production methods, standards or facilities or utilize suppliers or subcontractors. All said functions are the sole and exclusive prerogative and responsibility of the Company; provided, however, that no rules shall be made which shall have the effect of nullifying any specific provision of the Agreement, the Company is vested with the right to evaluate the efficiency of the employees and to transfer and promote the right to demote, to suspend, discharge or discipline any employee for cause.

OTHER RELEVANT PROVISIONS

WORK RULES

GROUP I

1. Contributing to unsanitary conditions or poor housekeeping.
2. Failure to report an on the job injury or accident to your supervisor on the day the injury or accident occurs.
3. Failure to use parking facility designated for employees.
4. Adjusting heating or air conditioning thermostats.
5. Unauthorized sales, solicitations or campaigns during actual working time. "Actual working time" does not include

authorized breaks or meal periods.

6. Failure to be dressed in approved working attire.
7. Engaging in horseplay, practical jokes, running in the plant.
8. Speeding or reckless driving on premises.

GROUP II

1. Failure to maintain acceptable standards of quality or quantity work output or failure to follow inspection procedures as directed.
2. Failure to report an absence before the scheduled starting time of an employee's shift. The notification must be made by the individual employee to his supervisor and if the immediate supervisor is not available, to the companies designated representative.
3. Wasting time, not at work position as required. Employees must be at work at their assigned work places, ready to work at the regular starting time and except for lunch or breaks periods or other absences authorized by supervision, employees shall remain at such work places and at work until quitting time.
4. Reading newspapers, books or magazines during working hours.
5. Leaving company premises during work time without permission, or leaving prior to the end of a shift without punching out.
6. Holding unauthorized meetings, loafing, loitering or engaging in unauthorized visiting other than during an authorized break.
7. Abuse of company tools, equipment, products or property.
8. Employees are not to conduct any personal business during

work time, including telephone calls.

GROUP III

1. Failure to turn in, falsifying or marking out inaccurate time cards, time slips or production records or doing same including punching in for another employee.
2. Entering restricted areas. Employees must enter and leave work through designated doors. No employee shall enter restricted areas without permission of their supervisor.
3. Failure to carry out instructions of a foreman, assistant foreman or a member of management not constituting insubordination or deliberate act.
4. Removal of company property from building or premises, without authorization.

GROUP IV

1. Reporting to work, or attempting to report to work in an unfit condition to perform work or under the influence of alcohol or drugs, or possession or use of alcohol or drugs while on company time or property.
2. Restricting production or operations, concealment of defective work, waste of material or supplies, or defacement or damage of company, employee or others property including buildings, machinery, equipment, vehicles, tool supplies and products.
3. Failure to immediately report knowledge of any theft of any employee, company or customers property to your immediate supervisor.
4. Possession of firearms, switch knives or any weapon on company property.
5. Insubordination, or refusal to execute or carry out orders or instructions by superintendent, assistant superintendent, foreman, assistant foreman or a member of management.
6. Fighting within the plant or on company property, or any act

which could provoke or intend to provoke a fight with anyone on company property.

7. Sabotage, work stoppage, slowdown, interference with, or the interruption of, or the impending of work or production.
8. Willfully damaging or defacing any property of anyone on company premises or engaging in any act of vandalism.
9. Any immoral or indecent conduct or unlawful or improper conduct, whether on or off company premises on or off working time, which casts discredit upon the company reputation or image or which adversely affects the employees relationship with his fellow employees supervisors or customers or adversely affects the company products, property or goodwill.

VIOLATION

The discipline for any rule violation is as follows:

- A. Verbal warning
- B. Written Reprimand and Warning
- C. Disciplinary Suspension without Pay
- D. Discharge

Rule	1st Offense	2nd Offense	3rd Offense	4th Offense
Any Group I	A	B	C	D
Any Group II	B	C	D	
Any Group III	C	D		
Any Group IV	D			

Where discharge is not the penalty for the first, second or third offense, it will be considered appropriate for the fourth offense for any rule violated under any group rule set forth.

BACKGROUND

The Employer, Alto-Shaam, Inc., is in the business of manufacturing restaurant-grade equipment for cooking/holding/serving food. The grievant, Leon Lowrie, is a metal fabricator, having held such position for about two years of his 33-month tenure with the Company. This grievance involves the discipline the Employer imposed on Lowrie for work performance.

On January 17, 1992, the Company posted the following Bulletin:

BULLETIN

DATE: January 17, 1992
TO: FABRICATION
FROM: DENNIS JANZEN
SUBJECT: QUALITY PROCEDURES

To maintain piece quality and consistency, each employee must carefully check every 1/5 of production run. Markers will be given to each employee, and it will be the employee's responsibility to initial and tag each piece that is checked. The only exceptions to this procedure will be items such as vent covers or CB mounts, and these exceptions will be determined only by your supervisor.

This is not a new rule. The Alto-Shaam Employee Handbook includes the following:

CONDUCT RESULTING IN DISCIPLINARY ACTION
OTHER THAN IMMEDIATE DISCHARGE

11. Failure to maintain acceptable standards of quality work output, or failure to follow inspection procedures as directed.

This rule will be enforced. Too often, first pieces are checked by a supervisor and the operator thinks this is an okay to run the remainder of the job without quality checks. It is up to you, as an operator, to check your job as it is being run.

Thank you.

Dennis Janzen

Copies of this Bulletin (hereinafter, the "Janzen Bulletin"), were not provided to each employee, but were posted at work stations and on the various machines.

On April 16, 1996, Lowrie was working the press brake in the fabrication department, bending highly polished stainless steel for use in hot carving shelves. Working from the manufacturing order and the blueprints, Lowrie set his machine and sought his supervisor's authorization/approval to commence the run, the first of two jobs assigned for that evening. The supervisor, second shift plant manager Jeffrey Groshek, said the settings looked right. Lowrie bent one part and called Groshek over again, at which time Groshek determined that the bend dimensions were too small and the overall dimensions were too big; accordingly, Groshek instructed Lowrie to add 1/8th of an inch to all dimensions. Lowrie expressed concern about this, because it was contrary to the dimensions indicated on the relevant blueprints, but he followed Groshek's instruction. After Lowrie bent the second part, Groshek determined that the dimensions were correct, an assessment in which the job welder concurred. After a final check, Groshek gave his authorization to run the job, which Lowrie then did.

Several hours later, Lowrie began work on the second job, and again called Groshek to review and inspect. Again directing Lowrie to add the 1/8th inch, Groshek authorized him to start the second run. During that run, Lowrie again called Groshek over, to express concern that he was having problems with the die boot shifting and the punch and die losing alignment. Groshek directed him to be vigilant in assessing the need to recenter his dies to account for the shifting, and, working slowly, to proceed with the job.

Groshek testified it has been his practice to distribute black markers to workers when they are assigned to his area, explaining their use in meeting the need to check one-fifth of the job run. It is Groshek's practice to check the first part of the run, and leave it to the individual workers to check the remaining aspects of the production.

Lowrie did not check either run as called for in the Janzen bulletin of January 17, 1992. Had he done so, he would have become aware prior to completing the runs that the dies on each run had shifted so significantly as to cause the items produced to be sufficiently damaged so that 73 out of 80 items had no commercial value and were fit only for scrap. The damaged goods had a total raw material cost of \$3,611.08 for the sheet metal, and a retail cost per item of approximately \$950.00 to \$1,200.00.

Assembly department supervisor Fred Baron became aware of possible problems with the run on April 18, when he received a note from the second shift supervisor, so stating. Baron and Janzen reviewed the product, determining it to be defective and incapable of being fixed by polishing or other method. Later that date, Lowrie was summoned to the personnel office and

issued a Step 3 Disciplinary Suspension to run from April 23 to April 25, for "failure to carry out instructions of a foreman, assistant foreman or a member of management not constitution (sic) insubordination or deliberate act." Lowrie refused to sign acknowledging that he and Baron discussed the matter.

On April 22, 1996, Lowrie and the union grieved the matter, as follows:

Leon followed foremans instructions on machine set-up & bending procedures. Jeff told Leon to add (.125) to the dimensions & Leon asked Jeff (ARE YOU SURE)??? TWICE & Jeff said yes. Adding .125, to this set-up is different than the print spec's. *WHAT IS THE REASON FOR HAVING PRINTS OUT ON THE FLOOR & THE SPEC'S ARE NOT FOLLOWED BY PEOPLE IN CHARGE????* Jeff ok'd both #11575 & 11567 TM & BC tops. Leon also informed Jeff a number of times the (BOOT) on machine was shifting sideways & Leon continued to adjust this.

Welding dept also ok'd these tops. Now, if these tops are so bad as was stated, why didn't the welders see this ¼ long mark by the corner on the good part of the tops. Are they not supposed to check their work they receive from other depts??? Is this not a standard procedure for depts???

I've seen these tops & these tops are beautiful compared to a lot of tops I've seen in the past & those tops were used without anything said.

As settlement, the Union sought to have the "Write-up taken out of His file and be reimbursed for time layed-off."

The parties held a grievance hearing on June 14, 1996. On June 19, 1996, James C. Schalow, the Company's Labor Representative, responded as follows:

THIRD STEP GRIEVANCE

Grievance No.: 7-96

Employee's Name: Leon Lowrie

Grievant: Leon Lowrie

Date of Grievance Hearing: June 14, 1996

Nature of Grievance: Discipline for failing to maintain acceptable standards.

Date of Answer: June 19, 1996

Grievance Answer

Grievant claims he followed foreman's instructions on machine setup and bending procedures, although 36 out of 40 stainless steel sheets were scrap because of the methods he used and another 37 out of 43 sheets were scrap because of the procedures used by grievant. The total cost of material loss was \$3611.00 plus labor costs.

His foreman checked the first sheets produced and they were "O.K.". Grievant was to check 1/5th of each run according to established procedures. Had Grievant made this check, the "scrap" would have been avoided.

Four bends were required. Bends 3 and 4 have to be made slowly, a procedure Grievant had done before. Further, his Foreman had instructed him to proceed slowly. He did not.

He did not at any time complain of a tooling problem or ask for assistance.

It is not a function of the welders to check this work, so the fact the welders did not notice a deficiency is not an excuse.

Since January 17, 1992 "Quality Procedures" have been in effect, a fact known to Grievant. Grievant knew of these requirements and violated the rules.

A copy is attached.

The penalty assessed was warranted under the circumstances and the grievance is denied.

ALTO-SHAAM, INC.

by James C. Schalow /s/
James C. Schalow
Labor Representative

POSITIONS OF THE PARTIES

In support of its contention that the grievance should be sustained, the union asserts and avers as follows:

The company has failed to satisfy its burden of establishing that there was proper cause for the discipline and suspension, in that the company failed to establish that the grievant was aware of express instructions that he allegedly violated. Further, it is unclear exactly which instructions the grievant was alleged to have violated. Finally, it appears the company selected the discipline on the basis of the cost of the grievant's alleged error, rather than the facts of the situation.

Doubt was established as to whether or not the policy of inspecting and initialing every twentieth piece was disseminated to all employees. This alleged policy does not appear in the otherwise exhaustive Work Rules and Procedures document. The grievant testified that he never saw the bulletin outlining the policy, and that the policy was not widely followed or enforced in his department.

Doubt also exists as to the employer's second apparent claim, that the grievant failed to follow explicit instructions on how to perform the job. The company witness mentioned these alleged instructions only after prodding; there is no evidence that the grievant failed to follow these alleged instructions.

While there is even disagreement as to whether or not the parts were actually defective, the union concedes the work performed may not have been up to the quality standards of the company. But the origins of the deficiency are less than certain.

The grievant's supervisor instructed him, against the grievant's job, to vary the dimensions called for. There is no evidence that the grievant knowingly disregarded a direct order or instruction from his supervisor.

The punishment doesn't fit the crime. Further, the rule itself suffers from being vague, in that the distinction between failure to carry out instructions and refusal to carry out instructions are so murky as to call into question whether the rule itself is reasonable.

Because the company failed to establish that the alleged policy was properly disseminated among the employees; because the vague nature of the rule itself makes it unreasonable and unenforceable; because the violation specified was selected on the basis of the cost of the alleged defective parts; because the grievant was never informed of a specific charge; because the company failed to prove that the grievant violated a Group III rule, and because the punishment was not commensurate with the alleged violation, the grievance should be sustained, the disciplinary action be removed and the grievant made whole for lost wages and benefits.

In support of its position that the grievance should be denied, the company asserts and avers as follows:

The evidence and the entire record show by overwhelming credible evidence that the grievant committed the offense and violated the work rule for which he was discipline. The employer thus satisfied its burden of proof to establish a prima facie case. The employer also proved that it gave the employees forewarning of the possible or probable discipline for such conduct.

The rule is reasonably related to the orderly and efficient operation of the company's business and the performance the company might properly expect of its employees.

The company conducted a full, fair and objective investigation to determine whether or not the grievant did in fact violate or disobey a rule or order. Proof was supported by substantial evidence, namely the damaged materials. The degree of discipline was reasonably related to the seriousness of the grievant's proven offense which resulted in hundreds of dollars of loss to the company.

It is primarily the function of management to decide upon a proper penalty; if management acts in good faith and upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, the arbitrator should not disturb it. There is no such inconsistency in application of punishment in this case.

Based on the record evidence and the terms of the labor agreement, the grievance should be denied.

The union waived its right to file a reply brief. The company filed a reply brief in which it further argued against the grievance, as follows:

The penalty applied is the least severe penalty set forth for a Group III violation. The union errs in attempting to apply principles more appropriate to a discharge case, but the standard to be applied to suspension cases differs, in that it is more favorable to management and less critical of penalties applied.

The union seeks to rewrite the labor agreement between the parties by, in effect, asking the arbitrator to administer his own brand of industrial justice. But an arbitrator is not free to do so, and an award will not be enforced when it is the product of perverse misconstruction.

The arbitrator should discharge his duty by determining whether the grievant actually engaged in the conduct alleged, and whether the discipline imposed was appropriate. No argument can be made that failure to meet production standards is not misconduct that adversely affects the company's business, and that the company has the right to operate efficiently and effectively. It is a reasonable rule to require employees to follow the instruction of supervisors as to production methods and standards.

The union asks the arbitrator to ignore the evidence, ignore the plain responsibilities and prerogatives of each party and, in support of some preference for the union, to substitute his judgment for that of management although the judgment of management is reasonable.

The law is clear that the arbitrator's decision-making authority is not unlimited. If the arbitrator exceeds his authority by substituting his own discretion for that vested in one of the parties, or if the arbitrator acts to dispense his own brand of justice, the award must be vacated.

The grievance should be denied.

DISCUSSION

As with most disciplinary grievances, there are two basic questions here: First, did Lowrie do anything wrong on April 16, 1996? Second, if so, did the employer impose an appropriate level of punishment?

Lowrie and the union contend his work product that night was perfectly acceptable, even "beautiful" compared to other items sold by the company. The preponderance of evidence indicates otherwise. The credible evidence -- sworn testimony by three plant managers, and the undisputed fact that the items in question were discarded as scrap -- establishes that steel sheets Lowrie bent were so substantially mishandled as to be reduced to waste.

I find, therefore, that Lowrie failed to perform his duties properly on April 16, 1996, fabricating product which was of such poor quality as to be unacceptable to the customers of Alto-Shaam, Inc. The question is the appropriate level of punishment.

The company argues forcefully for the traditional management prerogative to set the level of discipline, assuming its conduct is in good faith and the discipline generally commensurate with the infraction. The union argues this process has been beset by vagueness, disparate treatment and excessive punishment.

I agree with the company that it is not my role to determine the appropriate level of a Group III violation. But it *is* my role to determine whether a Group III violation has occurred.

As the union alleges, the company has made it clear that it decided to charge Lowrie with a Grade III level infraction rather than a Grade II because of the degree of loss and scrap involved. Assembly department supervisor Fred Baron, who signed the disciplinary notice, testified at hearing that he had told Lowrie at their initial meeting that it was "the amount of waste incurred during this happening" that justified the Group III determination.

Arbitral authority seems split on the question of whether the degree of loss and/or damage to goods and/or materials is a valid factor in evaluating the degree of punishment.

In reducing four-day suspension to one-day layoff, where negligence caused the largest refinery in the western hemisphere to shut down, the arbitrator said that, "(m)aking a distinction between gross negligence and ordinary negligence is a concept which the company has apparently borrowed from tort law. It has no place in grievance arbitration." Hess Oil, 98 LA 789, 791 (Hooper, 1992).

Reducing the discharge of a bus driver to an eight-month disciplinary suspension for ordinary, almost excusable negligence, another arbitrator said, "consideration of the severity of the damages reasonably to be anticipated in any of these instances is valid. The actual damages incurred are not relevant to the appropriate degree of severity of discipline." T.W. Recreational Services, 93 LA 302, 310 (Richard, 1989). And a third arbitrator clearly held that the degree of damage or amount of loss to the employer can be a factor in determining the degree of penalty. Southwest Fire Control Tax Dist. No. 6, 83 LA 900, 904 (Kanzer, 1984).

Here, Lowrie's poor performance caused \$3,611.08 in direct loss of raw material, plus unspecified loss in lost profits. This is a significant loss. But *by itself*, it does not answer the question of the level of Lowrie's infraction. The Work Rules and Procedures are detailed and specific, enumerating 29 separate offenses and four levels of discipline. Nowhere does it provide that a lower group violation can be raised to a higher level on the basis of the degree of loss or waste.

The documentary record and the sworn testimony leave ambiguous the precise action or infraction for which the company sought to punish Lowrie with the three-day disciplinary suspension. The record also indicates an apparent failure to interview Lowrie before coming to judgment on how and why he performed as he did on April 16.

The company presented three witness to support its action. Plant Superintendent Dennis Janzen testified that he had issued the bulletin of January 17, 1992, directing fabrication personnel to check every one-fifth of their production run; that the bulletin was posted throughout the plant and that every supervisor was directed to tell their subordinates to follow the policy, but that it was possible that someone who started after 1992 may not have seen the bulletin; that he authorized the discipline against Lowrie, and that based his issuance of the discipline on a conversation he had with second shift plant manager Jeff Groshek. Janzen's testimony did not include any reference to any discussions with Lowrie prior to the issuance of the discipline.

Assembly department supervisor Fred Baron testified that he was serving as assistant superintendent in Janzen's absence on April 16, 1996; that when arriving at work on April 18, he was informed via a note from the second shift supervisor that there was a problem with some items; that he and Janzen looked at the pieces, and determined they were defective and not usable; that the only time he communicated with Lowrie was when the grievant was summoned to the personnel office and presented with his write-up and his layoff; that at that meeting Lowrie said he thought a Group II rule violation would be more appropriate, but that Baron told him it was "the severity of the rule breakage, the amount of waste incurred during this happening" that justified the Group III determination, and that the instructions he believed Lowrie to have failed to comply with were the instructions on how to bend the part.

Second shift plant manager Jeffrey Groshek testified that he instructed Lowrie how to make the parts in question; that Groshek checked the set-up, and it looked good to him; that after Lowrie bent the first part the bend dimensions were small and the overall dimension looked big to Groshek, so Groshek told him to add 1/8th of an inch to all stations, which he did; that Lowrie bent the second part which Groshek thought looked good, which assessment a welder confirmed, at which time Groshek authorized Lowrie to run the job; that Groshek next interacted with Lowrie when the grievant called him over to inspect the set-up for the second run several hours later, which Groshek did, approvingly; that Lowrie next called him over during the run to report problems with the die boot shifting, which prompted Groshek to tell him to stay attentive to recentering the dies and proceed with the job; that Groshek specifically instructed Lowrie on

making certain bends very slowly, and that the parts turned out bad because Lowrie "proceeded too fast, I think"; that he had discussed the January 17, 1992 bulletin with Lowrie when he started in the department, and that "probably every six months or so *I remind the people when I notice they are not checking or marking their parts,*" (emphasis added); that Lowrie did not mark every one-fifth of the run on April 16, 1996; that if Lowrie had complied with the January 17, 1992 bulletin he would have found out earlier that he was making the parts wrong.

The documentary record is quoted above in its entirety. Several aspects are of special note. The first is that the notice of disciplinary suspension, issued by Baron on April 18, 1996, is conclusory in its statement of reason. That is, rather than explain the action for which Lowrie is being punished, it merely states the work rule which the company asserts Lowrie violated, and quotes the definition of Group III.

The second is the way the company's labor representative described the nature of grievance in his Grievance Answer of June 19, 1996: "Discipline for failing to maintain acceptable standards." The text of the answer also states that "Lowrie's Foreman had instructed him to proceed slowly. He did not." However, as the above discussion of the testimony indicates, neither Groshek nor Baron nor Janzen ever asked Lowrie to explain his performance failures of April 16. If the company seeks to punish Lowrie for making the bends too quickly, it behooves the company to make at least some effort to determine whether or not that was in fact the case.

But there is an even larger problem confronting the company, namely the January 17, 1992 Janzen bulletin. The company's labor representative explicitly cites that memo in his June 19, 1996 Grievance Answer, asserting that Lowrie "knew of these requirements and violated the rules." Janzen's testimony indicates that Lowrie's alleged violation of this bulletin was a significant, if not the sole, violation underpinning the discipline.

I concur that Lowrie violated the directive to check every one-fifth of the production run. However, by the clear and unambiguous language of the Janzen bulletin itself, a violation of that directive is a Group II infraction. The bulletin, after stating the requirement for each employee to carefully check every one fifth of the run, notes, "this is not a new rule. The Alto-Shaam Employee Handbook includes the following:

CONDUCT RESULTING IN DISCIPLINARY ACTION
OTHER THAN IMMEDIATE DISCHARGE

. . .

11. Failure to maintain acceptable standards of quality work output, or failure to follow inspection procedures as directed.

. . .

Allowing for differences in format (a reference to Employee Handbook rather than Work Rules & Procedures) and numbering, the language cited in the Janzen bulletin of January 17, 1992 is exactly the language of violation 1 in Group II Work Rules – and precisely the violation which Lowrie offered to admit to. Janzen's bulletin says, in effect, that failure to comply with the directive to check every one-fifth of the production run is a Group II violation. Moreover, as Groshek's testimony indicates – "probably every six months or so I remind the people when I note that they are not checking or marking their parts" – there is something less than strict enforcement of the Janzen bulletin.

I have searched the record and the written arguments of the company for a clear and concise statement of the exact instructions of a foreman the company alleges Lowrie failed to carry out. As best as I can understand it, the company alleges two such instances: failure to comply with the Janzen bulletin of January 17, 1992 relating to checking every one-fifth of the production run, and Groshek's reminder to Lowrie to perform his work carefully and slowly.

The Janzen bulletin, however, makes clear that failure to comply with the inspection procedure is a Group II infraction, since the language it quotes is found, verbatim, in Group II.

Moreover, its claims to the contrary, the company did not conduct a "full, fair and objective investigation" to determine whether Lowrie violated Groshek's reminder to do a good job. Groshek gave Lowrie the specific instruction to alter the set-up dimensions; Lowrie indicated some concern with deviating from the published blueprints, but complied. Had he refused to carry out Groshek's instructions on the set-up dimensions, that may have constituted a Group III violation, but that is not what happened.

What happened is that Lowrie finished his set-up, and Groshek gave his approval to run the jobs. During the run, the die shifted and the product was made worthless. Had Lowrie checked the run every one-fifth, there would have been less waste. There are instances when the degree of loss and damage can justify a higher punishment. But the fact of the loss, either in material or lost profits, cannot serve to transform a Group II violation into a Group III violation.

The company argues strongly against the arbitrator exercising personal sense of justice to modify a penalty. As a general theory, the company is right. The punishment for a Group III violation is set forth, and I do not seek to amend it. But the question is not the proper penalty for a Group III violation – the question is whether the grievant is guilty of a Group III violation at all.

I find that he is not, but that he has violated Rule 1, Group II violations, by his failure to maintain acceptable standards of quality work output and his failure to follow inspection procedures as directed. The published Work Rules and Procedures provide for a written reprimand and warning for the first such offense.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is sustained to the extent that the company shall:

1. Rescind the 3-day disciplinary suspension of the grievant, making him whole for all lost wages and benefits;
2. Issue, if it so chooses to, a Written Reprimand and Warning for the grievant's violation of Rule 1/Group II Work Rules for the incident of April 16, 1996.

Dated at Madison, Wisconsin, this 30th day of May, 1997.

By Stuart Levitan /s/
Stuart Levitan, Arbitrator