BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CARNES COMPANY

and

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL UNION NO. 565

Case 64
No. 55453
A-5606

(Debra Popp Grievance No. 97-02)

Appearances:

Mr. Richard Lewis, Business Manager and Financial Secretary-Treasurer, Sheet Metal Workers International Association, AFL-CIO, Local Union No. 565, 1602 South Park Street, Madison, Wisconsin 53715, appearing on behalf of the Union.

Michael, Best & Friedrich, Attorneys at Law, by **Mr. Marshall R. Berkoff**, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, appearing on behalf of the Company.

ARBITRATION AWARD

Sheet Metal Workers International Association, AFL-CIO, Local Union No. 565, herein the Union, and Carnes Company, Inc., herein the Company, agreed to have the undersigned arbitrate a dispute under the final and binding arbitration provisions of the parties' collective bargaining agreement. Pursuant thereto, the Wisconsin Employment Relations Commission appointed the undersigned as Arbitrator to hear and decide the dispute specified below. A hearing was held on December 9, 1997, at Madison, Wisconsin. A transcript was issued on December 15, 1997. The parties completed their briefing schedule on January 6, 1998.

After considering the entire record, I issue the following decision and Award.

STIPULATED ISSUE

Was the one-day disciplinary suspension of the Grievant, Debra Popp, on June 30, 1997, for good and sufficient cause under the contract? If not, what is the appropriate remedy?

FACTUAL BACKGROUND

The Company manufactures a wide variety of ventilation and air distribution sheet metal products and supplies the commercial building industry. The Company employs approximately 200 hourly represented employes and 100 non-represented employes at its plant in Verona, Wisconsin. The Company has had a collective bargaining relationship with the Union for at least 30 years.

The Company maintains a series of work rules which apply to all employes. One of these rules, No. 17, prohibits:

> Threatening or harassing behavior, verbal or physical directed at, toward, or about fellow employees.

These rules have been in effect since at least January of 1987. Violation of these rules "could result in disciplinary action up to and including discharge."

Recently, the Company has installed a new collaborative team-based work system in the work force. All the employes have gone through ten weeks of training on the system, problem solving, brainstorming and effective communication skills. Employes meet weekly in team meetings to discuss issues in their departments. This system depends upon employe involvement and positive relationships among employes. The system requires that employes communicate effectively and positively with each other. The Company has invested heavily in the program and has given employes sufficient time to come around to the concept of working together. Julie Sundby, Human Resources Manager, explained that if employes are disruptive and not supportive of positive communication style, it kills team communications.

Because of this work system and evolving Company needs, in August of 1996, the Company published a work rule addendum to the above Rule No. 17 which it gave to the Union and posted. This addendum stated as follows:

> . . . effective immediately, Work Rule #17, "Threatening or harassing behavior, verbal or physical directed at, toward, or about fellow employees." will be interpreted to include the following:
>
> > Any disruptive or inappropriate verbal or physical behavior.

On June 24, 1997, Richard Shannon was returning from a break into his work area which was in Department 113. He was hailed by Debra Popp, hereinafter the Grievant, who was outside of her own work area and heading for a bathroom. The Grievant stopped Shannon and motioned

for him to come over. Shannon testified that the Grievant confronted him saying

"Who the hell do you and Lucy think you are, turning people into the office or to management?" Shannon responded that he did not know what she was talking about and she replied that he had done that kind of thing before. Shannon stated that the Grievant told him to keep his nose in his own business and "stay in your own department." Shannon testified that she added: "It's not right to turn in other union members to management." Shannon stated that just before he walked away the Grievant said "If you're going to do that, you might as well be part of management." Shannon reported that the Grievant used other profanity as well as the "who the hell did he think he was statement" noted above. Shannon also reported that the Grievant was antagonistic, hostile, in his face and within arms' length distance or less. He further reported that she was yelling at him and that she was very aggressive.

The Grievant, while admitting to some of the general content of the statements made, testified that she was only asking him questions and was expressing her opinion.

Shannon testified that he found the confrontation very upsetting. He stated that he started making wrong pieces and one of his co-workers told him he should back off for a few minutes--that he was going to hurt himself. Shannon said he could not do his normal work because he was upset. So he backed off and went to another area for a short period to collect his thoughts. Shannon, who had worked for 15 years in various plants and who had been at the Company for about one and one-half years, testified that he had never experienced a confrontation like this previously in any work place. Shannon went home and continued to think and to worry about what had happened.

Shannon testified that he was still trying to make up his mind what to do about the incident when he reported to work the next day. At that point, a co-worker told him that she had heard that he had turned somebody in and Shannon decided since it had gone that far already he had "no choice but to turn this matter over to the company."

Sundby testified that after she received a report of the Grievant's disruptive encounter with Shannon she commenced an investigation. During the course of this investigation, Sundby learned that the Grievant confronted Shannon because she mistakenly believed that he had reported another employe in his department, Bernie Daughenbaugh, for violating a new safety rule concerning the length of pants. Shannon had chaired a safety committee that worked on the new rule issued in June of 1997, which dealt with clothing and provided for "pants that go to the ankle." Daughenbaugh, who apparently did not like the rule, rolled her pants legs up. A supervisor told her that she needed to return her pants to the ankle position or she would be sent home and she complied. Just before the Grievant confronted Shannon, she was in his department talking to Daughenbaugh and Bev Ruegsegger.

As noted above, Shannon had served on a Company safety committee as a volunteer and as chairman. The committee was an advisory committee which made recommendations to the Company and had worked on the rule concerning garment length. The Company expects employes to report safety violations, and if Shannon had reported another employe engaging in a safety violation, that would have been appropriate behavior. Shannon denies having reported any

employe to the Company.

Sundby interviewed both Shannon and the Grievant as part of her investigation. She was familiar with the history of Rule No. 17 and its application.

Sundby testified that the use of profanity by the Grievant was not central to the violation. Rather, it was an issue of her communication style being negative, disruptive, aggressive, intimidating and disturbing to a co-worker. The Grievant had been warned that that sort of communication style was not perceived well by her co-workers and could be disruptive.

The Company determined that with respect to any differences in the reports from Shannon and the Grievant, that Shannon should be credited. The Grievant had been disciplined several times in the past for the same kind and similar kind of misconduct and had received personal counseling from Sundby. Shannon, in contrast, had an absolutely perfect record and there had never been a single complaint about him. The Grievant was vague and could not "recall" a lot of things in the investigation. In contrast, Shannon was thoughtful and considerate in his report and had no basis to exaggerate or falsify his report of the encounter. Sundby thus determined that the Grievant had been "antagonistic and confrontational."

Sundby also testified that she considered the Grievant's prior disciplinary record in determining that a one-day disciplinary layoff would be appropriate in this case. She stated that the Grievant's record included a 1991 three-day disciplinary layoff for intimidating and insubordinate behavior that was ultimately upheld in arbitration.

In 1996, Sundby also investigated numerous complaints regarding the Grievant's behavior and comments directed to and about handicapped employes, the use of profanity toward co-workers and a general negativity in the work place affecting co-workers. The results of that investigation led to a formal warning. Popp did not grieve or challenge the accuracy or appropriateness of that discipline for violations of the same Rule No. 17 that is involved in the instant matter. The Grievant was specifically admonished in that discipline about her communication style and negative comments and uncooperative behavior directed toward co-workers. The Grievant assured Sundby that she was "working on these problems." The formal warning stated:

> . . . you have been informed that we must see immediate and sustained progress toward eliminating these behaviors if you are to continue working here.
>
> These types of behaviors are not acceptable at the Carnes Company and are serious violations of Carnes Company Work Rule #17. . . . Any future complaints of a similar nature if determined to be true will not be tolerated and will subject you to discharge.

Sundby further testified that other employes had received similar discipline for the same type of misconduct and the same rule violations. She specified employes Donny Ellis, Bev

Ruegsegger, Caroline Schultz and Bernie Daughenbaugh. Ruegsegger was a Union witness who

received a formal warning for a Rule 17 violation on June 6, 1997. She also testified that she was about nine feet away from Shannon and the Grievant when they had their disagreement and did not hear the Grievant "yelling" at him.

Sundby added that her discipline was not more serious than the one day off because she was considering the Grievant's length of service and wanted to give her one additional chance.

The Grievant admitted that she had received training as part of the work system on dealing constructively and collaboratively with other employes and communicating in a non-negative way. She also admitted that if she engaged in the behavior that Shannon reported that she was wrong and had violated Company Rule No. 17. She further admitted that she had no explanation as to why Shannon would have falsely reported her behavior. Since they had no personal animosity toward each other away from work, she stated that she had no idea why he would come forward and make up or fabricate the information he had reported.

PERTINENT CONTRACTUAL PROVISION

ARTICLE 11
DISCHARGES AND DISCIPLINE

> Section 1 - No employee shall be discharged or disciplined without good and sufficient cause. Any employee who has been discharged shall, if he/she so desires, be granted an interview with his/her shop committeeperson before he/she is required to leave the plant.

POSITIONS OF THE PARTIES

Union's Position

The Union initially argues that the Company did not prove that the Grievant had numerous prior disciplinary actions against her.

The Union next argues that the investigation was not thorough, nor conducted fairly and objectively. The Union opines that the Company did not obtain substantial evidence or proof that the Grievant was guilty as charged. In this regard, the Union maintains that the Company made a number of allegations involving what people said and did including a member of the Union Shop Committee but did not provide any witnesses or documentation to prove its point. The Union notes that Mr. Shannon was upset about the incident one minute and joking about it a short time later. Based on same, the Union does not believe the incident was that big a deal and claims that the Company failed to produce any witnesses or testimony to establish that the Grievant was yelling at or in Mr. Shannon's face. The Union concludes that the conversation that took place between the Grievant and Mr. Shannon amounts to only "plain, ordinary shop talk."

The Union rejects the Company's contention that the development of a "collaborative workplace team system" should play a role in the Grievant's suspension. In this regard, the Union states that the Company never informed it that this was the reason for enhancing Work Rule No. 17 to include a prohibition against "any disruptive or inappropriate physical behavior." The Union also argues that in a collaborative work place a person should be able to criticize "without fear of retaliation for saying something that management doesn't like," that there should be fewer rules not more, that the parties should not be spending a majority of their time dealing with "questionable discipline," and that while hourly employees have to change some of their attitudes and beliefs so does management have "to let go of some of their ingrained attitudes and old ways of treating employees." The Union concludes that based on the instant proceeding it is clear that this "has not happened at the Carnes company."

Based on the foregoing, and the record as a whole, the Union requests that the Arbitrator sustain the grievance and order the Company to rescind the discipline and remove it from her file. The Union also asks that the Grievant be made whole for her loss of wages as a result of the Company's action.

Company's Position

The Company basically argues that the one-day disciplinary layoff of the Grievant was for good and sufficient cause. In support thereof, the Company first maintains that it had a right to rely on Mr. Shannon's report of the Grievant's misconduct as a basis for her suspension because of his "exemplary record" as an employe of the Company. The Company secondly points out that it is undisputed that Rule No. 17 is clear and unambiguous citing, in particular, the Grievant's admission "that if she engaged in the behavior that Shannon reported, the rule would have been violated and the behavior was wrong." Thirdly, the Company argues that the Grievant cannot claim the one-day suspension was not appropriate progressive discipline in light of her prior disciplinary record including a written warning specifically related to Rule No. 17 violations. Fourth, the Company maintains that the Union's contention that third party witnesses are needed to support the Company's decision is without merit since it reviewed all available data and checked to no avail for other witnesses. Finally, the Company maintains that it acted appropriately because it mitigated the discipline to a one-day disciplinary layoff because of the Grievant's long service. The Company adds that the one-day suspension for disruptive and inappropriate behavior in this case is consistent with similar disciplinary action for similar misconduct.

In reaching the above conclusion that the Grievant's conduct warranted disciplinary action, the Company also maintains that it had the right to make credibility determinations based on facts, witness demeanor, a witness's motivation or motive, their history of being truthful and the same kinds of factors that guide other finders of facts.

The Company next argues that it must be able to maintain and support rules necessary to its work system. In particular, the Company claims that it is extremely important for an employer to be able to protect the rights of its employes to report harassment or disruptive

behavior to the Company. The Company maintains that this is what is at stake herein. The Company notes that its rule prohibiting disruptive or inappropriate verbal or physical behavior is reasonable and is not challenged by the Grievant or the Union in this case as being unreasonable. To the contrary, the Company points out that the Grievant "readily admits that if she engaged in the behavior reported by Mr. Shannon that would have been inappropriate and a violation of Rule 17." The Company reiterates that the record supports a finding that the Grievant, without factual basis, verbally assaulted Mr. Shannon in the work place and during work time. The Company claims that there is no question of the adverse effect that the Grievant's inappropriate behavior had on Mr. Shannon. The Company adds that there is no reason to question his credibility. On the other hand, the Company argues the Grievant is not a credible witness regarding the incident in dispute because she "has every reason and motive to try to put as bland a story together as possible given she is in the last stages of the disciplinary process." The Company adds: "To make matters worse, the union business agent got involved." In conclusion, the Company states that it is "very clear that Popp's confrontation with Shannon was not an innocent disconnected inquiry but rather a manifestation of misguided hostility which has risen from the level of a verbal assault . . . to an institutional threat by Mr. Shannon's own labor organization." The Company believes it acted appropriately as a result thereto.

The Company further argues that Union Exhibit No. 1, a handout from the Equal Rights Division entitled "Harassment in the Workplace," does not define or limit Company Rule No. 17 but instead makes it clear that management has the responsibility to hear and respond to harassment concerns.

In response to the Arbitrator's request that the parties discuss the issue of discipline for the Grievant's conduct in light of "differing expectations of the employer in the context of a collaborative workplace," the Company cites and discusses a number of cases. However, the Company emphasizes that "whether there was an advanced work system in place or not, the Company believes that if Shannon's report of the behavior is credited, then the discipline is appropriate."

Based on all of the above, the Company requests that the grievance be denied and the matter be dismissed.

DISCUSSION

The parties stipulated that there are no procedural issues and that the instant dispute is properly before the Arbitrator for a decision on the merits pursuant to the terms of the agreement.

At issue is whether the Grievant's suspension was for good and sufficient cause under the contract.

As noted in CARNES COMPANY, INC., CASE 60, NO. 47283, A-4904 (MCGILLIGAN, 1992), because this is a disciplinary issue it is incumbent that the Company prove by a clear and satisfactory preponderance of the evidence that the Grievant is guilty of the actions complained of. If the Company proves that the Grievant is guilty of the actions complained of, the next question is whether the punishment is contractually appropriate, given the offense.

Contrary to the Union's assertion, the record supports a finding that the Grievant is guilty of the actions complained of. In this regard, the Arbitrator notes that the Grievant admitted to the general content of the statements made. (Tr. at 23 and 58) The Arbitrator finds that the Grievant made these statements in a confrontational and antagonistic way. 1/ Company Rule No. 17 prohibits "Threatening or harassing behavior, verbal or physical directed at, toward, or about fellow employees." It has been interpreted by the Company to include: "Any disruptive or inappropriate verbal or physical behavior." The Grievant admits that if she did what Shannon said she did that would have been wrong and a violation of the aforesaid Company Rule. (Tr. at 65) Shannon was harmed by the Grievant's actions. (Tr. at 32, 43-45) Based on the foregoing, the Arbitrator finds that there is a factual basis on which to suspend the Grievant. 2/ The remaining question is whether the punishment is appropriate for the offense.

A review of this question may be undertaken within the context of the issues raised by the Union in arguing against suspension.

First, contrary to the Union's assertion, the record indicates that the Grievant had a prior disciplinary record for the same or similar offenses. In particular, the Arbitrator notes a three-day suspension in 1991 for disruptive and insubordinate behavior directed to her supervisor. (Company Exhibit No. 3) In addition, the Company gave the Grievant a written warning specifically related to Rule No. 17 violations in 1996. (Joint Exhibit No. 3)

The Union next argues that the investigation was not thorough, nor conducted fairly and objectively. However, the Union offered no persuasive evidence in support of same. To the contrary, the record indicates that the Company interviewed the two main parties and anyone else who may have heard the conversation. (Tr. at 35) Based on appropriate factors as discussed below, the Company credited Shannon's version of the events. Based on same, the Arbitrator finds that the Company conducted its investigation in an appropriate manner. The record also supports a finding that this verbal confrontation went beyond "plain, ordinary shop talk" as alleged by the Union.

The Union rejects the Company's assertion that the development of a "collaborative workplace team system" should play a role in the Grievant's suspension. At least in the context of this particular dispute, the Arbitrator would agree. As pointed out by the Company, whether there was an advanced work system in place of not, if Shannon's report of the behavior is credited, then the discipline is appropriate. It is also appropriate, as the Union points out, for employes under proper, protected circumstances to be able to criticize management "without fear of retaliation for saying something that management doesn't like." However, the Grievant acted in an inappropriate manner in violation of the aforesaid Company rule when she aired her complaints at issue herein.

Therefore, the Arbitrator also rejects this argument of the Union.

In addition, the Arbitrator points out that the Company cited, unrebutted by the Union, a number of examples of other employes who had received similar discipline for the same or similar misconduct.

Finally, the Arbitrator notes that the Company mitigated the penalty imposed herein based on the Grievant's long length of service with the Company.

Based on the above, the Arbitrator finds that the punishment imposed on the Grievant fits the crime.

Based on all of the above, and on the record as a whole, and absent any persuasive evidence or argument by the Union to the contrary, the Arbitrator finds that the Company has sufficient factual basis upon which to suspend the Grievant, and that the penalty imposed is contractually appropriate given the offense. Therefore, the Arbitrator finds it reasonable to conclude that the answer to the stipulated issue is YES, the one-day disciplinary suspension of the Grievant, Debra Popp, on June 30, 1997, was for good and sufficient cause under the contract.

Based on all of the foregoing, it is my

AWARD

That the grievance of Debra Popp is hereby denied and this matter is dismissed.

Dated at Madison, Wisconsin, this 6th day of March, 1998.

Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator

ENDNOTES

1/ In arriving at this conclusion, the Arbitrator credits the testimony of Shannon over that of the Grievant. As pointed out by the Company, the Grievant has been disciplined several times in the past for the same and similar kind of misconduct and had received personal counseling from Sundby regarding Company Rule No. 17 violations. In contrast, Shannon has a perfect record with no complaints about him. Even the Grievant admitted that she could think of no reason for Shannon to report her behavior one way if she had not done the things he said she did. (Tr. at 59) Sundby complained that the Grievant was vague and equivocal during the investigation that led to her suspension. (Tr. at 23) In contrast, Shannon's story was consistent and unequivocal. (Tr. at 24) Sundby's experience during her investigation reflects the Arbitrator's experience at hearing. Shannon testified clearly and concisely as to the sequence of events on the date in question while the Grievant's testimony was vague (Tr. at 65-66), unresponsive (Tr. at 60-62), and unpersuasive (Tr. at 67-69). Finally, Shannon appeared more truthful in his response to questions at the hearing (Tr. at 39-51) than the Grievant who often seemed to be more concerned about her view of what happened in the past than what actually happened. (Tr. at 59-66 and 70-71)

2/ The only matter that gives the Arbitrator pause regarding Shannon's claims that the Grievant confronted him in an inappropriate way is his testimony that she was "yelling" in his face. (Tr. at 43) Bev Ruegsegger testified, to the contrary, that she was standing only nine feet away and did not hear any yelling despite the fact that the machines were not running. (Tr. at 79) However, this matter standing alone is not enough, in the Arbitrator's opinion, to credit the Grievant's version of the events over that of Shannon's. It is possible that Ruegsegger simply did not hear the Grievant yelling at Shannon because she was right in his face. (Tr. at 43)

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