

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SUB-ZERO FREEZER COMPANY

and

**LOCAL UNION 565, SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, AFL-CIO**

Case 71
No. 55488
A-5611

Appearances:

Mr. Richard Lewis, Business Manager, Local Union 565, Sheet Metal Workers International Association, AFL-CIO, appearing on behalf of the Union.

Foley & Lardner, Attorneys at Law, by **Mr. Michael H. Auen**, appearing on behalf of the Company.

ARBITRATION AWARD

Local 565, Sheet Metal Workers International Association, AFL-CIO, herein the Union, and Sub-Zero Freezer Company, herein the Company, jointly requested the Wisconsin Employment Relations Commission to designate the undersigned as an arbitrator to hear and to decide a dispute between the parties. The undersigned was so designated. Hearing was held in Madison, Wisconsin, on November 19, 1997. A stenographic transcript was made of the hearing and a copy of said transcript was received on December 1, 1997. The parties completed the filing of post-hearing briefs on January 23, 1998.

ISSUES

The parties were not able to stipulate to the issues and agreed that the arbitrator would frame the issues in his award. The undersigned believes the following to be an accurate statement of the issues:

Did the Company violate the contract by requiring Neal Keyser to do daily housekeeping/cleanup in his work area without giving him day work? If so, what is the appropriate remedy?

BACKGROUND

The Company has an incentive pay plan, under which plan the compensation for many of the employees is based on the employee's production during a standard work day of 480 minutes. Time studies are used to set production standards. When an employee meets the production standard, then any additional production within the allotted time results in the employee earning more than the base hourly rate. The details of the incentive plan are set forth in an appendix to the labor contract. The negotiated details of the incentive plan include specific percentages for personal, fatigue and unavoidable delay allowances (herein also referred to as PFD). Each of those allowances is set at 5% and the three allowances result in a combined total time of 72 minutes for each 480 minute work day. The contract does not define the elements or activities which make up each allowance. The allowances are treated as an unallocated total and employees are allowed the full 15% total regardless of how much time is actually spent for each of the factors. Under the incentive plan, once the employee has met the production standard, the employee may use the time remaining in the work day either to increase compensation through additional production or for personal purposes.

In January of 1997, the Company began a plant-wide cleanup campaign. Non-production time, or day work, was given to incentive employees for cleaning until the plant reached a reasonable level of cleanliness, which level then would be easier to maintain with regular housekeeping in their work area by each employee. Keyser did receive day work for cleaning his work area during the campaign. Day work is essentially a reduction in the 480 minute day. When the Company authorizes a certain amount of time as nonproduction time for an incentive employee, that time is subtracted from the 480 minutes, so the employee's production is compared to a shorter work day which results in a higher net production rate and, in turn, higher compensation than would result from the computations based on the 480 minutes.

Before the 1997 cleanup campaign, employees were expected to maintain a clean work area through regular housekeeping and only the employees in the paint shop received day work for such daily housekeeping. Paint shop employees were given 30 minutes of day work on a daily basis because each shift has to clean the area by removing the old tape from the track, putting new tape on the track and picking up the paper on the floor which paper has been collecting paint during the shift. The paint shop employees continue to receive the 30 minutes of day work for their daily housekeeping duties.

At all times relevant herein, Keyser was working as a welder in under-counter welding. The size of Keyser's work area was approximately 50 feet by 13 feet. Prior to the 1997 cleanup, Keyser normally spent between 3 to 5 minutes cleaning up his work area without receiving day work for the time spent cleaning. Keyser estimates that, after the cleanup campaign, it takes between 15 to 20 minutes total to clean his area two or three times each day. At the request of a Union steward, the Company's Industrial Engineering Supervisor, James Motelet, did an informal check of the time it took Keyser to clean his work area at the end of his work day. It took Keyser just over 16 minutes to sweep his work area using an 8 inch wide broom. Motelet rated Keyser's

effort in the cleaning at 90% and concluded that if Keyser had

used the available 24 inch wide broom rather than the 8 inch wide broom and if Keyser's effort had been at the 100% level, then he could have swept the area in less than 5 minutes. Motelet did a similar informal check of Keyser's counterpart on the third shift and found that it took said employe 5.366 minutes to sweep the same work area as Keyser swept.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE V WORK WEEK, HOURS OF WORK AND OVERTIME

Section 1. The regular work week shall be forty (40) Hours per week, eight (8) hours per day, five (5) days per week.

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Section 3. The Employer will grant the privilege to employees to smoke in designated areas before and after the work shift and during rest periods. Further, a rest period of fifteen (15) minutes in the morning and (15) minutes in the afternoon will be granted. The same shall apply to any second or third shift.

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ARTICLE XII SHOP RULES AND BULLETIN BOARDS WASH-UP TIME

Section 1. The Company shall have the right to establish, maintain, and enforce reasonable rules and regulations to assure orderly plant operations, it being understood that such rules and regulations shall not be inconsistent or in conflict with any provision of this Agreement. The Company shall maintain on its bulletin boards, and furnish the Union with a written or printed copy of all such rules and regulations and all changes therein. Changes in existing plant rules and regulations, as well as new rules and regulations promulgated by the Company, shall not become effective until three (3) regular work days after copies thereof have been furnished to the Union and posted on the bulletin boards. If the Union considers a proposed Company rule or regulation to be inconsistent or in conflict with any provision of this Agreement, such rule or regulation shall be subject to the Grievance Procedure and Arbitration. Any plant Rule so challenged may not be placed in effect by the Company until completion of Step 2 of the Grievance Procedure.

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Section 3. Employees shall be permitted five (5) minutes of Company time at the end of the shift in which to properly record job cards and wash up.

Section 4.

...

(b) Housekeeping: Each employee will make every effort to keep their immediate work area clean and orderly.

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SUB ZERO INCENTIVE PLAN

A. TIME STUDY AND WAGE INCENTIVE PROCEDURE

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Section 11. All production standards shall contain a personal allowance of 5% of the total available production time.

Section 12. All production standards shall contain a fatigue allowance of 5% of the total available production time.

Section 13. All production standards shall contain an unavoidable delay allowance of 5%. The Company Industrial Engineer will determine the actual allowance based upon the operation, the number of elements, weight of material, length of run and other factors which are necessary in establishing proper production standards.

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POSITION OF THE UNION

The Union believes it should be quite evident that when the Company instituted a new housekeeping policy, it was the Company's intent to have the work done on the employees' available production time and not on day work or non-production time.

An expert witness called by the Union, Professor Lund, testified that no time had been allowed in the time studies and/or process sheets for housekeeping during either the elemental times or the allowances for personal time, fatigue, and avoidable delay. The Company tried to imply that housekeeping was included in the allowance for unavoidable delay, but the allowance for unavoidable delays is for delays which are beyond the control of the employee. Housekeeping

is in the hands of the operator and is a standard operating procedure.

When the Company came out with the new housekeeping policy, the policy was neither posted as required by the contract nor approved by the Union's bargaining committee.

The Union asks that the grievance be sustained and that employes be given reasonable amounts of time each day to properly clean their work areas, without a negative impact on their incentive earnings. Further, Keyser's earnings should be adjusted beginning with the date on which the grievance was filed.

POSITION OF THE COMPANY

Section 4(b) of Article 12 clearly and explicitly sets forth the agreement of the parties that employes would make every effort to keep their immediate work area clean and orderly. Approximately five minutes of general housekeeping is all the Company is requiring of Keyser. Keyser does not lack the tools, the ability or the time to do the required housekeeping.

The fact that housekeeping is not expressly listed on the job process sheet is not significant. The job process sheets do not list every possible activity which takes place during an employe's work day. For example, the job process sheets do not identify either the two fifteen-minute rest periods or the five minute wash-up period, both of which are required by the contract. Neither did the parties allocate the wash-up period, the fifteen minute rest periods or the housekeeping duties to a particular category of allowance like personal time, fatigue or delay. Even Professor Lund acknowledged that the parties can put duties and allowances in the contract rather than in the process sheets. The parties did put the housekeeping requirement in the contract, which provision co-exists with the incentive pay plan. The parties intended and have practiced the treatment of the daily housekeeping as part of the unallocated PFD allowance.

Keyser was expected to do daily housekeeping prior to the 1997 plant clean-up and frequently did spend 3-5 minutes a day doing some housekeeping. Although the Company in the past may have been lax in requiring daily housekeeping, it is not prevented from insisting on future compliance with a contractual provision.

The Company seeks a denial of the grievance.

DISCUSSION

The Union's case rests primarily on the fact that the job process sheets do not specifically include an allowance for housekeeping, which omission the Union interprets to mean the Company must pay day work for the housekeeping. Such an interpretation ignores the specific language in Section 4(b) of Article 12, wherein employes are required to "make every effort to keep their immediate work area clean and orderly." Said provision makes no reference to incentive employes receiving day work for the time spent in the cleaning. Further, it is clear from the

record that, prior to the 1997 cleanup campaign, employes did perform housekeeping

without receiving day work. Keyser testified that, prior to the cleanup campaign, he cleaned his work area regularly, even if the cleaning was not on a daily basis, without receiving day work for the cleaning. Keyser further testified that he usually spent between three and five minutes cleaning his work area at the end of his shift. In fact, the only incentive employees who have been given day work for the time they have spent in daily housekeeping of their work area, except during the 1997 cleanup campaign, have been the paint shop employees. Thus, the past practice certainly supports the Company's position that incentive employees have not received, and should not receive, day work for the time they spend in performing daily housekeeping in their own work areas.

Further, as acknowledged by Professor Lund, the parties can put items in their labor contract, rather than in the job process sheets. Herein, the Company and the Union apparently have agreed to such a placement with respect to certain items, e.g., the two fifteen minute rest periods during a shift and the five minutes of wash-up time at the end of a shift. It appears that the parties have treated daily housekeeping in the same manner as the rest periods and the wash-up time, i.e., placing it in the contract, instead of in the job process sheets.

As noted by the Company, the parties have not expressly identified the activities which form the basis for the personal, fatigue and unavoidable delay allowances. Although the fifteen minute rest periods are considered by the parties to be part of the allowances, such an allocation is not specified in the contract. Such a treatment supports the Company's assertion that the normal daily housekeeping is included in the three unallocated allowances.

Although Keyser estimated that it took him 15-20 minutes to sweep his area on a daily basis, his estimate appears to have been based on the cumulative total time for sweeping the area more than once during a shift. Keyser has been told by his supervisor that he does not need to clean his area more than one time each shift. If Keyser uses the larger broom for most of the sweeping and applies a normal effort to the cleaning, the amount of time consumed for each time he sweeps his area should be much less than his estimate and, rather, should be similar to the amount of time he spent on daily housekeeping prior to the 1997 cleanup campaign.

The undersigned is not persuaded that the Company established a new policy or rule following the 1997 plant-wide cleanup campaign. Instead, the Company is requiring compliance with an existing contractual provision. As correctly argued by the Company, even if the Company had been lax in the past in requiring employees to perform daily housekeeping in their work areas, the Company was not prohibited from insisting on such housekeeping following the cleanup campaign.

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

AWARD

That the Company did not violate the contract by requiring Neal Keyser to perform daily housekeeping/cleanup in his work area without giving him day work for the time he spent performing the housekeeping/cleanup work; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 15th day of April, 1998.

Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator

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