BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SPARTA MANUFACTURING COMPANY

and

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 140

Case 41
No. 56391
A-5672

Appearances:

Mr. Randy Priem, Plant Manager, Sparta Manufacturing Company, 445 Holtan Street, Sparta, Wisconsin, 54656, appearing on behalf of the Employer.

Mr. Kevin D. Lee, Representative, Laborers' Local 140, Laborers' International Union of North America, 1920 Ward Avenue, LaCrosse, Wisconsin, 54601, appearing on behalf of the Union.

ARBITRATION AWARD

Sparta Manufacturing Company and Laborers' International Union of North America Local No. 140 are parties to a collective bargaining agreement that was in effect at all times relevant to this proceeding, and which provides for the final and binding arbitration of certain disputes. The Union, by request to initiate grievance arbitration received by the Commission on April 17, 1998, requested the Commission to appoint either a Commissioner or member of its staff to serve as Arbitrator. The Commission appointed Paul A. Hahn as arbitrator. Hearing in the matter was held on May 21, 1998 in Sparta, Wisconsin. There was no transcript made of the hearing, and the parties declined the opportunity to file post hearing briefs.

ISSUE

Arbitrator's Statement of the Issue:

Did the Employer violate the collective bargaining agreement, Article IV (Hours of Work) when it disciplined the Grievant for an absence from work on March 24, 1998; if so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE II

RECOGNITION AND UNION SECURITY

Section 1. Recognition

The Union shall be the sole representative of all employees in collective bargaining with the Employer except the following:

> Executives, salesmen, office and clerical employees, watchmen and guards, and supervisory personnel.

(a) The term employee, as hereinafter used, shall mean all employees of the Company who are in the above-defined collective bargaining unit.

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ARTICLE III

UNION REPRESENTATIVES

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Section 3.

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6. The Union and the Company agree the Wisconsin Employment Relations Board shall appoint an arbitrator from their commission to arbitrate such grievances. The decision of the Arbitrator shall be final and binding upon both parties.

ARTICLE IV

HOURS OF WORK

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Section 5. Absences

. . .

Company will excuse a total of three (3) medical (doctors or dentists) visits per fiscal year (July 1 thru June 30). To be excused the employee must furnish a written excuse from provider stating that employee did visit the doctor or dentist. After the total of three (3) visits has been reached any further visits will be covered by the normal attendance policy.

. . .

ARTICLE IX

GENERAL PROVISIONS

Section 1. Management

Subject to the provisions of this Agreement, the management of the plant, property and business of the Company, the direction of the working force, including the right to determine who shall be hired, promoted, demoted, transferred and/or assigned to jobs, to suspend, discipline and discharge employees for cause, to increase or decrease the working force, and to determine the products to be handled, produced or manufactured and the methods, processes and means of production or handling shall be vested exclusively in the Company. Suspensions, discipline and discharge shall be subject to the grievance and arbitration procedures provided in Article III hereof. Any employee who is promoted, demoted or transferred by the Company contrary to his own desires shall not suffer any loss of seniority as a result of such promotion, demotion or transfer.

BACKGROUND

This grievance involves Sparta Manufacturing Company and Laborers' International Union of North America Local Union No. 140 representing employes of the Company set forth in Article II, Recognition and Union Security, Section 1. (Jt. Ex. 1) The Grievant and the Union allege a contractual violation by the Company for a refusal by the Company to permit the Grievant to use an excused dentist visit under Article IV, Hours of Work, for accompanying his wife to a dentist on March 24, 1998. This refusal resulted in suspension without pay discipline to the Grievant.

The collective bargaining agreement in Article IV, Hours of Work, contains a no fault attendance policy. Absences and tardiness which is not excused pursuant to the attendance policy result in one or more occurrences; occurrences lead to progressive discipline up to termination. In the Fall of 1997, the parties, by mutual agreement, modified the attendance policy to provide that when an employe reached ten occurrences or fourteen tardies, which would normally subject the employe to termination, the employe rather than being discharged would receive a five day suspension and a ninety day probation period. If the employe successfully completed the ninety days without further occurrences, the employe would go back to the previous disciplinary step pursuant to said attendance policy. During the parties' negotiations for the current collective bargaining agreement (Jt. Ex. 1 and Jt. Ex. 2) which became effective on March 1, 1998, the parties negotiated into the labor agreement a provision under Article IV, Section 5, Absences, to provide that the Company would excuse a total of three (3) medical (doctor or dentist) visits per year (July 1 through June 30) provided that the employe furnished a written excuse from the provider stating the employe did in fact visit the doctor or dentist.

On March 23, 1998, the Grievant became concerned about his spouse because of her inability to eat due to problems with her teeth. The Grievant called Gunderson Clinic, Ltd. On March 23 and was referred to the Department of Dental Specialists. On March 24, the Grievant called the clinic at about 8:00 a.m. and learned that a dentist could see his wife at approximately 3:00 p.m. that day. Because the Grievant could not make other arrangements, the Grievant accompanied his wife to the Gunderson Clinic. The Grievant called the Company at noon that day and talked to Production Supervisor Rick Watzka advising Watzka that he would be absent. (The Grievant works a shift from 1:00 p.m. to 9:15 p.m.) Grievant's wife received root canal treatment and nitrous gas for relief of pain. The Grievant and his family returned to their home at approximately 5:30 p.m. Grievant did not return to work part of his shift because he could not arrange childcare.

When Grievant returned to work on March 25, 1998, he learned that his absence on March 24, 1998 was an occurrence under the absentee policy, which gave him ten and one-half occurrences subjecting him to the revised absence discipline policy. The Grievant received five days suspension without pay on April 2, 3, 4, 6 and 7. (Jt. Ex. 5) The Grievant provided two dentist excuses (Jt. Ex. 3 and Jt. Ex. 6, page 3) verifying that he had been at the dentist's office with his wife and that his presence was needed because his wife would have to have a driver after her treatment. Grievant gave these dentist excuses to the Company. Grievant believed that the excuses would provide him with an excused absence pursuant to the new language negotiated into the collective bargaining agreement under Article IV, Section 5. The Grievant, believing that the Company had wrongfully disciplined him, filed a grievance with his Union Steward, William Blum. (Jt. Ex. 4)

The parties processed the grievance through the contractual grievance and arbitration procedure and were unable to resolve the grievance.

The hearing in this matter was held by the Arbitrator on May 21, 1998, in the City of Sparta. Prior to the close of the hearing the parties stipulated that there was no issue that the Grievant had in fact visited the dentist's office with his wife. The parties further stipulated that if the doctors and dentists excuse provision of Article IV, Section 5 only applies to employes and not to family, the discipline given to the Grievant is correct under the collective bargaining agreement. The hearing closed at 12:15 p.m. The hearing was not transcribed. The parties were given the opportunity, but declined, to file briefs and stated their positions by oral argument at the close of the arbitration hearing.

POSITIONS OF THE PARTIES

Union:

It is the position of the Union that the three doctor or dentist visits per fiscal year language, negotiated into the current collective bargaining agreement, applies to visits by the employe and the family of the employe, provided that the employe accompanies the family member. The Union takes the position that the parties during their contract negotiations in

January and February of 1998 discussed the Union's proposal that the employes needed more excused absences to deal with family situations. The Union takes the position that the only concern the Company expressed during the negotiations was that the employe actually had to make the visit to the doctor or dentist and provide a written excuse from the doctor or dentist stating that the employe did in fact make the visit. The Union argues that the Grievant followed the contractual requirements and that the Company has stipulated that it does not challenge the Grievant's reason for being absent on March 24, 1998. Lastly, the Union position is that the Grievant should be made whole for lost wages and benefits and that the Grievant should be placed at that point in the attendance policy procedure as though he had not received the occurrence resulting from the March 24, 1998 dentist visit.

Company:

The position of the Company is that the pertinent language under the attendance policy was only to apply to visits to a doctor or dentist when the employe was being treated by the doctor or dentist. The Company states that the doctor or dentist visit does not apply to a family member. Therefore, it is the Company's position that because the visit by the Grievant's spouse to the dental specialist was not an emergency, this resulted in another occurrence or unexcused absence. This brought the Grievant to ten and one-half occurrences which, under the modified attendance policy, resulted in the Grievant receiving a five-day suspension without pay and being placed on a ninety-day probation period. It is the position of the Company that the absence policy provides for enough flexibility to include family medical visits and that the Company would not and did not agree that the new language applied to visits other than by the employe. The Company argues that the Grievant knew the policy, had signed all the previous disciplinary action against him and knew that the next occurrence under the attendance policy would result in five day's suspension without pay. Lastly, the Company states that the discipline given to the Grievant was appropriate under the collective bargaining agreement, that the dentist excuse provision under Article IV - Hours of Work, Section 5 –Absences was not applicable to the Grievant's situation and therefore the grievance should be dismissed.

DISCUSSION

The facts leading to the discipline of the Grievant are essentially not in dispute. The parties agree that the crux of this matter is the interpretation of the following paragraph of Article IV, Hours of Work, section 5:

> Company will excuse a total of three (3) medical (doctor's or dentist's) visits per fiscal year (July 1 thru June 30). To be excused the employee must furnish a written excuse from provider stating that employee did visit the doctor or dentist. After the total of three (3) visits has been reached any further visits will be covered by the normal attendance policy.

The Company interprets this language as applying only to the employe. The Union interprets this language to apply to visits by the employe or by his or her family, provided that the employe accompanies the family member to the doctor or dentist. The parties agree that if I find that the language applies only to employes, the discipline of Grievant was appropriate.

The parties offered evidence of bargaining history and past practice. Mike Wiedl, Union steward on the third shift and a member of the Union's bargaining team, testified that the parties discussed the language on several occasions in negotiating the current contract (effective 3/1/98). Wiedl testified that the Union went into negotiations wanting to increase the opportunity for employes to be off for family medical situations. Wiedl stated that he had no recollection of the Company representatives stating that the language was only to apply to employes. Wiedl testified that Company spokesman, Randy Priem, was only concerned that there be an actual visit by an employe to a doctor or dentist. Priem testified that he did not recall whether or not he stated the language would only apply to employes. In his testimony, Priem stated that it was not the intent of the Company to apply the language to family members. Priem stated that if family members were to be included he believed the language would have reflected that fact. Wiedl testified that he reviewed the language before the contract was signed but was not worried that there was not any specific reference to family, as he assumed that is what the language meant based on the negotiation discussions.

Past practice, which arbitrators also consider to interpret contract language, offers no assistance in this case. The only instance anyone could recall where an employe might have been excused for a family medical situation involved an extended leave of absence; the facts were so vague as to offer no guidance in this matter. Further, I do not find grievant's situation to qualify as an emergency as that term is commonly interpreted in labor agreements. The Union also never argued that it was an emergency. Documented emergencies are excused under the attendance policy.

Although contract language is normally interpreted against the drafter, in this case the Company, to interpret the language as the Union argues would add a significant benefit to the labor agreement without documentation or testimony to support such a finding. It is clear from the record that absenteeism is a critical issue to the Company. To expand the language to family members is not something I am inclined to do based on the evidence. It also can be argued that the Union had a responsibility to ensure that a reference to family should have been included in the language. I would also, if I ruled in favor of the grievant and the Union, have to define "family." I again would be adding language and substance to the contract when all that I am charged with doing under Article III is to interpret a specific clause in the labor agreement. I also believe the language itself supports the Company position. Normally language such as ". . . the employe must furnish a written excuse from the provider. . . ." refers to the employe being treated by the doctor or dentist, not someone else. The language goes on to state that the employe "did visit" the doctor or dentist, not someone else. And lastly, after three of these visits, any further visits will be covered by the normal attendance policy. Again, this language argues for an interpretation that the three excuses cover the employe; family members are not covered by the normal attendance policy. Therefore, I find that the language at issue, the last paragraph in Article IV, is not ambiguous and only covers employes and does not cover anyone else .

I also find that the evidence of past practice and bargaining history introduced at the hearing is too inconclusive to be of any value and cannot alter my interpretation of a plain reading of the contractual provision. The Grievant testified that he was under the assumption based on representations of his Union at the ratification meeting of the contract settlement that the excuses could be used for family. However, what happened at Union ratification meeting cannot bind the Company which is not part of or privy to that internal Union meeting. Therefore, the Grievant's assumption, even if credible, cannot alter the outcome of the interpretation of a contract provision which I have found is clear on its face. While this decision produces an unfortunate result for the Grievant, given Grievant's precarious position in reference to his occurrence record, it would have been prudent for the Grievant to have checked with the Company to ensure that he would be excused on March 24, 1998.

Based on the evidence and consideration of the oral arguments of the parties, I find that the Company did not violate the labor agreement when it disciplined the Grievant pursuant to the contractual absence policy and, therefore, the grievance cannot be sustained.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 8th day of June, 1998.

Paul A. Hahn /s/

Paul A. Hahn, Arbitrator

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