

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**UNITED ELECTRICAL, RADIO AND MACHINE
WORKERS OF AMERICA, LOCAL 1127**

and

STEELTECH MANUFACTURING, INC.

Case 2
No. 56461
A-5678

(Grievance of Renee Walls)

Appearances:

Mr. Tom Ellett, Field Organizer, on behalf of the Union.

Palmer Law Offices, by **Mr. Charles B. Palmer**, on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “Company”, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Milwaukee, Wisconsin, on May 20, 1998. The hearing was not transcribed and both parties filed briefs that were received by June 2, 1998. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUES

1. Whether the grievance is arbitrable.
2. If so, did the Company have just cause to terminate grievant Renee Walls and, if not, what is the appropriate remedy?

BACKGROUND

The Company manufactures steel products at its Milwaukee, Wisconsin, facility. One of the products it produces is a "rack" - a steel, freight-like container for the United States military which is used to carry various materials. Racks are painted and then numerically stenciled at the end of the manufacturing process.

Grievant Walls, a Painter "B" on the second shift, worked for the Company since April, 1996. Part of her job duties included painting the stencils on the racks. She received an oral warning in October, 1996, for failing to properly stencil flat racks (Employer Exhibit #3). Said warning was never grieved.

Second shift Production Manager Linda Connors - formerly the Union's president and a supervisor since October 20, 1997 (unless otherwise noted all dates hereinafter refer to 1997) - testified that employe Frank Lee told her on November 4 at about 6:45 p.m. or 6:50 p.m. that Walls was refusing to put stencils on a rack; that she, Connors, went out to the production floor where Walls was spray painting a flat rack; that Walls at that time was over-spraying the panel; that she repeatedly asked Walls to come down from a ladder so that they could talk, but that Walls refused to do so and said that she did not want to stencil; that she, Connors, began to get sick from the spray fumes; that Walls finally came down from the ladder without speaking to her and that she then immediately went to the bathroom; and that after Walls exited from the bathroom, she stood by a wall for about 15-20 minutes without doing any work. Connors added that she finally told Lee to do the necessary stenciling because the production line was being held up. Even then, said she, the daily quota of finished racks was not met.

Connors returned to her office, at which point she got Union Steward Lyrnice Nowles to bring Walls to her office. There, Connors told Walls that she was being suspended for insubordination and issued to her a "Progressive Disciplinary Action Notice" stating that she was being suspended. Walls then accused Connors of lying about what had previously taken place between the two of them. Connors met with Walls at the latter's November 10 exit interview, at which time Walls said: "I know why you fired me. I filed a sexual harassment lawsuit against (Plant Superintendent Odies Wess). You don't have the balls to fire me. That's why you hired Linda."

On cross-examination, Connors acknowledged that she had "no floor knowledge" of the production floor; that Walls was the first person she had ever disciplined; that she did not know when Walls and her crew took lunch on November 4; that Lee approached her on November 4 at about 6:45 - 6:50 p.m. to complain about Walls; and that Walls asked her on November 4 why Lee could not do the necessary stenciling. Connors also said that the ultimate decision to fire Walls for insubordination was a "joint decision" between her and Plant Superintendent Wess.

Wess testified he told Conners on November 4 to indefinitely suspend Walls pending further investigation and that he told Conners he personally would fire Walls, but that he left that decision up to Conners. He added that Walls was asked for Company keys at her exit interview to which she replied, "I'm not giving you a fucking thing"; that Walls then claimed that she was being fired because she had filed a sexual harassment claim; and that that was the first time he learned about it.

On cross-examination, Wess explained that the decision to fire Walls was made only after he had interviewed several witnesses to the November 4 incident, but he added that he did not interview all of the witnesses present.

Human Resources Director James Otey testified that he did not interview employees before the Company terminated Walls and that the Union never filed a second step grievance form. On cross-examination, he said he refused to meet with Walls because she was no longer employed and that the Union offered to meet with the Company representatives regarding her grievance at another location, but that he refused to do so.

For her part, Walls testified that Lee at about 4:30 p.m. on November 4 asked her to put stencils on a rack; that she told him to do it himself because he was not doing anything; that Conners subsequently spoke to her about that incident; that she immediately came down from her ladder when Conners asked her to do so; that Conners never told her to put on the stencils; and that after going to a restroom, she stood by a wall for about 10-15 minutes because she and other employees were waiting for an inspector. She added that Conners and Union Steward Nowles told her on November 4 to leave the premises and that she did so. Walls added that she subsequently was never given the chance to confront Conners and that she was fired at a November 10 meeting.

On cross-examination, Walls said that Conners on November 4 told her, "You are terminated"; that Nowles then "tried to defend me" by telling Walls that insubordination only warranted an oral warning; that all of the stenciling work on the rack in question on November 4 was performed by the time she went to the ladies' room; that after she went to the ladies' room, "Ms. Conners wasn't even on the floor"; that she called Walls a liar on November 4 after Walls said that she had refused to do the stenciling; and that she never cursed during the November 10 meeting and that she at that time handed in her badge.

POSITIONS OF THE PARTIES

The Union claims that the Company lacked just cause to fire Walls because it denied her procedural due process by failing to properly investigate the November 4 incident; because it did not give her an opportunity to confront her accuser; and because it refused to hold a contractually required second-step grievance meeting. The Union also asserts that Walls was not insubordinate

because she “was unshakable in her credible denial that Conners had directed her to perform work other than which she was already doing” and because there thus “was no work left to do”. As a remedy, the Union seeks Walls’ reinstatement and a make-whole order.

The Company, in turn, maintains that “the grievance was waived” and thus is not arbitrable because the Union failed to file a second-step grievance and because its request for arbitration was untimely filed. The Company also contends that it had just cause to fire Walls because she “engaged in insubordination” on November 4 when she refused to follow Conners’ repeated admonitions to finish the stenciling work and because it complied with all of the procedural requirements encompassed by the just cause standard.

DISCUSSION

As I ruled at the hearing, the grievance is arbitrable because the Union informed the Company in a timely manner that it was grieving Walls’ termination and because the Company itself helped contribute to the problem by refusing to meet with Walls on the Company’s premises. Moreover, while the Company asserts that the Union’s request for arbitration was untimely, Human Resources Director Otey himself acknowledged at the hearing that the Union requested arbitration before Thanksgiving Day, which was well within the thirty (30) day period provided for in Article VII, Section 2, of the contract.

In the future, however, if the Union wishes to avoid the kind of procedural arbitrability question posed here, it must comply with all of the procedural requirements set forth in Article VII of the contract, entitled “Grievance and Arbitration”. The Union has dodged a bullet here only because the Company has not been prejudiced by what it has or has not done and only because the contract does not mandate dismissal of a grievance that does not follow these requirements .

Turning now to the substantive merits of the grievance, both parties recognize that this issue turns on the head-to-head credibility clash between Walls and Conners over what transpired between them on November 4. If Walls’ testimony is credited, the grievance will be sustained; if Conners’ testimony is credited, the grievance will be denied.

I credit Conners’ testimony in its entirety because Walls’ testimony is simply incredible. Thus, Walls testified that Conners told her on November 4 that she was being terminated. Yet Walls testimony is flatly contradicted by Conners’ contrary testimony and by the November 4 “Progressive Disciplinary Action Notice” prepared by Conners and given to Walls which clearly stated that Walls was being suspended.

Moreover, Walls did not tell the truth when she claimed that Conners immediately left the production floor after their November 4 encounter. For if that were true, how could Conners have known that Walls went to the restroom and that she thereafter stood by a wall for about 15-

20 minutes doing nothing, which is something that Walls herself acknowledged? The only possible way for Conners to have learned that fact was for her to remain on the production floor. I therefore credit her testimony that she did so.

I further credit Conners' testimony that she expressly told Walls to stencil on November 4 and that Walls flatly refused to do so. Conners' testimony must be credited because she, unlike Walls, had no reason to lie and because she testified in such a credible manner. The same cannot be said for Walls.

By refusing to perform said stenciling work, Walls engaged in insubordination – so much so that she was responsible for the delay in processing that day's quota of finished racks. Since paragraph 14 of the Company's Rules of Conduct (Employer Exhibit 2) states "It will be considered insubordination if an employe refuses to perform properly-assigned work or fails to comply with job duties or responsibilities", the Company had just cause to immediately terminate her for such a serious act of insubordination.

The only possible basis for finding otherwise is the fact that the Company's investigation was not as complete as it should have been, as Human Resources Director Otey testified he did not interview any employees before the Company terminated Walls. The absence of any such interviews could be violative of the procedural requirements of the just cause standard because the need to fully and fairly investigate possible disciplinary infractions is one of the most important requirements of that standard. Indeed, the Company itself recognizes this point at page 13 of its brief. However, Wess testified that he interviewed witnesses, thereby showing that the Company did to some extent investigate the November 4 incident.

If Walls had told the truth here and if the Company's investigation prejudiced her in any material way, I might overturn her termination on this basis alone. However, since Walls did not tell the truth and since any additional interviews would only have hurt her efforts to hide the truth, I find that the Company's actions did not prejudice her and that its discharge decision hence must stand.

In light of the above, it is my

AWARD

1. That the grievance is arbitrable.
2. That the Company had just cause to terminate grievant Renee Walls; her grievance is therefore denied.

Dated at Madison, Wisconsin, this 17th day of June, 1998.

Amedeo Greco /s/
Amedeo Greco, Arbitrator

