BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KRC (Hewitt) INCORPORATED

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACEWORKERS, LOCAL 1855

Case 51
No. 55532
A-5616

Appearances:

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., by **Frederick Perillo**, 1555 RiverCenter Drive, Milwaukee, WI 53212, appearing on behalf of the Union.

Godfrey and Kahn S.C., by **Dennis W. Radar**, 333 Main Street, Suite 600, P.O. Box 13067, Green Bay, WI 54307-3067, appearing on behalf of the Employer.

ARBITRATION AWARD

KRC (Hewittt) Incorporated, hereinafter referred to as KRC, the Employer, or the Company, and Local 1855, International Association of Machinists and Aerospaceworkers, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances arising thereunder. The Union made a request, with the Company concurring, that the Wisconsin Employment Relations Commission designate a commissioner or member of its staff to hear and decide a grievance filed by the Union. The undersigned was so designated. The hearing was transcribed, the parties filed post-hearing briefs, and the record was closed on March 16, 1998.

ISSUE

The parties do not agree as to the statement of the issue.

The Union sees the issue as (w)hether there was just cause for the discharge of Mr. Mabry? If not, what is the remedy?

The Company sees the issue differently: (d)id Mr. Mabry engage in reckless conduct? If so, did the Company have just cause to terminate his employment when he attempted to lift a 96,000 pound roll with a lifting beam with the capacity of 24,000 pounds, resulting in damage to the roll, and buckling the beam?

I adopt the Company's statement of the issue to which I add: If not, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE XI
Discharge

Section 1. No employee will be discharged, disciplined, or suspended without just cause.

Section 2 . . . All disciplinary action taken under the provisions of this Article shall be subject to the grievance procedure. If it has been determined that any employee has been wrongfully discharged, the employee shall be reinstated. If it is determined that the employee has been disciplined too severely, payment of back pay, if any, for time found excessive shall be made . . .

RELEVANT WORK RULES

Level 2 – Violation will result in suspension and/or termination.

2. Disobedience or gross insubordination
3. Willful or reckless destruction or damage to company or customer property.

Level 3 – Any work rule violated in this category will result in disciplinary action:

1. First offense – written/verbal warning.
2. Second offense – written warning.
3. Third offense – one day suspension
4. Fourth offense – employee subject to suspension or termination.

Rules falling into this classification are as follows:

4. Negligence resulting in substandard products, inferior work, the breaking of tools, damaging of equipment or wasting of supplies.

BACKGROUND

KRC is in the business of servicing and recovering rolls that are used in the papermaking industry. The rolls serviced by the Company may vary considerably in length and composition. However, all of the rolls are quite heavy, with weights expressed in tonnage units. Weight variations among the rolls may also be considerable: some rolls are made of stone (granite), some are made of metal; some are filled with water, others are not; some are hollow, others are solid.

Visual inspection of the size of a particular roll can sometimes give a rough indication of its approximate weight to experienced plant employees. However, merely eyeballing a roll is not a reliable means of determining its weight, for outside appearances can be deceiving. Thus, rolls of the same apparent size can differ greatly in weight from each other.

Servicing needs of individual rolls may require moving them from one part of the plant to another. This is accomplished by means of cranes, straps, and lifting beams. KRC currently has a lifting beam rated to move roll tonnage as high as 50, another rated at 47 tons, two rated at 25 tons, and one rated at 13 tons.

Prior to the incident that culminated in this grievance, KRC also had a lifting-beam rated at 12 tons. This is a beam commonly referred to by plant employees as "the yellow beam." It was the lifting-beam "of choice" for a number of shop floor employees, even for rolls with weights exceeding the 12 ton weight rating of the beam. Unlike the higher rated 50-ton beam, the 12-ton beam required no extender: its length was long enough to allow straps to be suspended *perpendicularly* from the beam to the end of the roll to be lifted and moved which insured a more secure ride for the roll. About five or six years ago, some weld cracks were discovered on the yellow beam, and it was sent out for repairs.

The cranes are controlled by an electrical mechanism (pendant) that hangs from the crane to easy grasping range on the plant floor. Buttons on the mechanism control vertical lift as well as N-S and E-W movement. An additional button on the pendant operates a Weightronic scale attached to every overhead crane.

Each crane is located underneath a girder where truck wheels for the crane are able to operate. The truck wheels are grooved and ride the rail as if it were a rail track.

The Weightronic scale enables employees to determine the weight of a roll. Newer cranes have their individual scales built into them; older models require a separate weighing device that is attached to both the crane hook and the lifting beam. Weighing is accomplished by hooking the Weightronic scale to the roll and lifting it an eighth of an inch above the ground.

The Company asserts employees are instructed to weigh each roll before attempting to lift it with a crane and lifting-beam. The Company further contends that lifting rolls that weigh

more than the weight rating of the lifting-beam should be done only with the permission of the shift supervisor. While the Company acknowledged that occasionally lifting-beams were used to move rolls with weights that exceeded the tonnage rating of the beam, the Company claimed that is done only with the permission of the shift supervisor.

Several long-term plant employees testified that it has been a common plant practice for employees to use the yellow 12-ton beam to lift rolls that the employees knew exceeded the rated tonnage of the beam – even rolls weighing 40,000 to 50,000 pounds. Each insisted that supervisory permission was not sought in many of these instances, that the practice was done in plain sight on the plant floor, that the supervisors on each shift had an unobstructed view of plant floor activities, and therefore the supervisors must have known about the practice. However, no specific names, dates or instances were provided in support of this contention.

On June 25, 1997, the grievant herein, Steven Mabry, reported to work to start his third shift duties at 11:00 p.m. Eugene Pingel was his shift supervisor. Although an experienced ten-year Company veteran, he had had only nine months experience as a supervisor.

When Mr. Mabry reported in, Mr. Pingel assigned him two tasks from his work order list. Mr. Pingel had already assigned another helper, Bob Novak, to perform certain work on a hydrein roll that belonged to Appleton Paper Company. The roll had a diameter of approximately 40 inches with a 300-inch face length. It weighed 96,000 pounds.

Mr. Pingel had told Mr. Novak that if he needed any help he should ask Mr. Mabry to assist him. Mr. Novak concluded he needed assistance and accordingly requested Mr. Mabry's aid.

Mr. Pingel's work order list indicated that the Appleton Paper Company roll required its grooves to be pressure washed. Performing this task required moving the roll to the wash room located in another part of the plant.

In pursuit of this assignment, Mr. Novak had gotten the crane and 12-ton yellow beam and brought it to the roll. He hooked up one end of the roll to the beam with a sling, then moved to the other end intending to secure it to the beam with another sling. Mr. Mabry noticed that Mr. Novak was experiencing difficulty in securing one of the slings so he provided help.

The crane controller was on Mr. Mabry's end. He attempted to weigh the roll, but was unable to secure any reading from the scale. The scale was later determined to have a dead battery.

Although Mr. Mabry had been unsuccessful in his effort to weigh the roll, he testified he ". . . . honestly thought the roll weighed 40,000 pounds." He said that the basis for his mental estimate was other rolls of similar size he had seen with their weights written on them. He asserted that had he known how much the roll actually weighed he would not have attempted to lift it with the yellow beam.

But he did. Operating the crane, Mr. Mabry lifted the roll about three feet from the floor. At this point the excessive weight of 48 tons proved too much for the 12-ton yellow beam. The beam buckled, and the roll it was lifting crashed to the ground.

Supervisor Pingel heard the crash. When he arrived at the scene of the mishap he saw the " . . . lifting beam sort of bent, dangling in the air and . . . the Appleton Paper roll kind of tipped over on the side." The face of the roll was nicked by the fall and had to be reground. The roll was also disassembled and inspected at the request of the customer. Apparently the crane involved was also damaged, along with the beam.

Mr. Pingel directed two 50-ton cranes be used to lift the roll out of the way. He also attempted to weigh the roll, but like Mr. Mabry, was initially unable to obtain a scale reading. After a maintenance person changed the battery in the scale, the roll was weighed and found to be 96,000 pounds.

Mr. Pingel agreed that in order to move the Appleton Paper roll to the wash room, it was necessary to move the roll perpendicular to the length of the shop, i.e., move the roll sideways. Mr. Pingel further acknowledged this would have been impossible to accomplish using two cranes instead of only one. He further concurred that there were only two beams in the shop with sufficient length to allow the slings to hang perpendicular to the roll: the 12 ton yellow beam and the 50 ton orange beam. However, to make the orange beam sufficiently long would have required an extender be plugged into it.

Mr. Pingel acknowledged that he had not directed either Mr. Mabry or Mr. Novak to use the big orange beam. In fact, he had not given any directions to either as to which beam to use or how to pick up the roll.

Mr. Pingel further indicated that although he had received training on the operation of the KRC cranes, he didn't believe he had sufficient knowledge of the cranes to order an employee to lift a load that would exceed the crane's weight limit.

Although several witnesses indicated that the weight of a roll couldn't be accurately determined by simply looking at its exterior, Mr. Pingel testified that one could gain " . . . some kind of idea" of the roll's weight by observing its size. Manufacturing Manager Gerald Poss also asserted this. Under further questioning, however, Mr. Poss agreed that a short roll that has a small diameter but is solid metal or stone will be heavier than a larger hollow roll.

The KRC employee charged with crane operation training admitted to knowing of one or two instances per year where employees exceeded lifting beam weight ratings.

It appears that no employee has ever been disciplined for exceeding the lifting capacity of a crane or beam in the past or even damaging equipment. No discipline was imposed even when a suction box was dropped from a crane, damaging a customer's roll on which it fell.

Since the accident on the evening of June 25, 1997, it appears the Company has established a new operations policy under which all rolls are to be weighed when they are unloaded from the trucks *and the respective weights then written on the appropriate roll*. This is an action that had been requested at least twice by an employee Safety Committee following safety inspections on 6/20/96 and 8/27/96.

The Company took other action as well. Both Mssrs. Mabry and Novak were discharged from their employment with KRC. (Mr. Novak's discharge is the subject of a separate grievance.)

It also appears that Eugene Pingel is no longer a supervisor, but is back in the bargaining unit. According to Mr. Pingel, however, his demotion was not related to the June 25, 1997 plant mishap that occurred on the shift he was supervising.

Steven Mabry had begun his employment with the Company on April 1, 1996, as a janitor. He is a high school graduate, but also has received some vocational or technical education at Fox Valley Technical College.

After working as a KRC janitor for several weeks, Mr. Mabry successfully bid for the position of helper, and started to perform the responsibilities of his new position on August 5, 1996.

Mr. Mabry testified that in preparation for his new job, his Employer provided him certain training as to the operation of the company cranes and slings. He described his training as consisting of a videotape and explanations as to weights, weight ratings of the slings, how the cranes worked, and proper usage of the cranes.

According to 23-year Company employee, Jerry Riehl, Mr. Riehl personally trained Mr. Mabry on how to use the cranes. Mr. Mabry's training card indicated he was given "hands-on" overhead crane training. According to Mr. Riehl, the training included " . . . basic mechanics of the crane, how it works, right down to the safety and what belts you use, what beams to use, how to run the crane, what the - - what to look for. If you get yourself in trouble, getting the swing of the crane, how to get out of it."

Mr. Riehl further testified that as part of the training he tells employees to use the proper beam for the proper load, where to find the beams in the shop, how to use the scales, and to go to maintenance if the scales didn't work. Mr. Riehl conceded that that his instruction to Mr. Mabry as to beam weight was of a general nature, e.g., make sure you use the right beam with the right size roll.

Mr. Riehl also indicated that although each beam is engineered with a "safety rating," (e.g., a 50 ton beam may be able to actually handle 100 tons of weight), he does not discuss safety ratings with the employees he is training.

Mr. Mabry stated the only training he received as to the operation of the beams was "hands-on." By this he meant he learned how to use of the beams simply by using them, himself. However, Mr. Mabry denied that anyone from the Company ever physically showed him how to use the beams, including the trainer who signed his training form.

Mr. Mabry also asserted that using the yellow beam to move rolls with weights that exceeded the tonnage rating of the beam was a common plant practice and that he was aware of the practice on June 25, 1997.

Mr. Mabry further testified that he was unaware of how to change the battery in the scale and that he had never been trained to do so. He also said that he had never been told by anyone from management that he needed permission to exceed the 12-ton rating of the yellow beam.

Prior to the termination of his employment, he had had an unblemished work record with KRC. His employment with the Company was the first industrial job he had ever held. On the date of hearing in this matter, Mr. Mabry was 20 years old.

POSITIONS OF THE PARTIES

Company

The Company regards the grievant's conduct as "careless and reckless." The Company finds its definitions of "reckless" in *The Random House College Dictionary*, Revised Edition (1975), Library of Congress ISBN –679-72720-5: **1.** utterly unconcerned about the consequences of some action; without caution; careless. **2.** Characterized or proceeding from such carelessness.

The Company believes that Mr. Mabry consciously deviated from the standard practice in lifting rolls, i.e., that Mabry considered following the proper procedure but then proceeded to lift the roll with the 12-ton beam anyway. This, the Company contends, is "clearly reckless, not forgetful, not negligent."

The Company analogizes the facts of the instant matter with the facts in HESS OIL VIRGIN ISLANDS CORP., 91 LA 1284 (HUNTER 1988). In HESS OIL, the grievant violated a company procedure by failing to purge a No. 2 Vacuum pre-stripper heater of gas fumes before attempting to relight it. Instead he had (incorrectly) guessed at the number of burners that were extinguished, assumed the oil pressure was low, and opened a valve to supply more gas. An explosion followed. The arbitrator found the Company had just cause to dismiss the employee.

The Company argues that in essence Mr. Mabry did the same thing: after determining the scale did not work, instead of calling maintenance to repair the scale or consulting with his supervisor, he "guessed" the 12-ton beam was of adequate capacity to lift the roll. The beam failed and the roll crashed to the floor.

The Company notes that the grievant's reckless behavior caused extensive damage to Company property and could have caused injury to him or others.

The Company argues that Mr. Mabry ". . . has substantial experience at lifting rolls making him fully aware of the responsibilities and importance of weighing beams prior to their preparation for grinding." Consequently, according to the Company, Mr. Mabry "must be subject to the same scrutiny as the arbitrator followed in HESS OIL and the discharge must be upheld.

The Company also cites NORTH AMERICAN AVIATION, INC., 19 LA 529 (KOMAROFF 1952), in support of KRC's termination of Mr. Mabry's employment. In this case, the Company Arbitrator Michael I. Komaroff sustained the *discipline* of the grievant whose workmanship was not "up to standard." Within a relatively short time span, the grievant (who had an unblemished work record) had drilled the wrong holes in 16 different parts. The arbitrator noted that the grievant had previously and correctly performed the operation hundreds of times. The Company quotes Komaroff:

> In view of this past experience, Carlson could only have worked sixteen parts incorrectly if he had given practically no thought to his work. The Company has the right to protect itself against such mental lapses on the part of the employee. The Impartial Arbitrator agrees with the Company that Carlson's work on this particular day was neither up to his own standards nor to any reasonable shop standard . . . SUPRA, at 527, 532.

The Company denies that Mr. Mabry was not adequately trained in operating cranes. The Company argues that Mr. Mabry was definitely aware that he had to weight the roll prior to lifting it because he tried to weigh it. According to the Company, after Mr. Mabry determined that the scale didn't work, his decision to try to lift the roll anyway is totally inexcusable – especially because the maintenance department was only 50 feet distant and there were no particular time pressures under which Mr. Mabry was working.

The Company also cites MARINETTE COUNTY (COURTHOUSE), CASE 152, NO 53071, MA-9218 (1976) in support of the Company's discharge of Mr. Mabry. In MARINETTE COUNTY, Arbitrator Edmund J. Bielarczyk decided the failure of a sheriff's department dispatcher to send officers to an alarm "because she had a gut feeling there wasn't anything to it" was a sufficient basis for her discharge. Instrumental in Arbitrator Bielarczyk's conclusion was the fact that the dispatcher's action was contrary to her training, that she had properly performed her job on many past occasions, and that she had no plausible reason for her lapse. The Company underlines Arbitrator Bielarczyk's finding that the grievant " . . . did deliberate the matter and determined not to use alternative communications to dispatch an officer to the location of the alarm."

The Company believes that, like the grievant in MARINETTE COUNTY, Mr. Mabry " . . . had the duty and responsibility, one of which he had performed in the past, of checking the weight of

the roll to determine if the beam capacity was adequate to lift the roll. His actions after he determined the scale was not working were totally 'deliberate.'"

The Company argues that Mr. Mabry " . . . deliberately did not report to the maintenance person or supervisor that the scale was not working properly, but then consciously went ahead and tried to lift the 96,000 pound roll with the 12-ton capacity beam." The Company asserts that Mr. Mabry had "two very simple options: 1) he could have found the maintenance person and had the batteries replaced, or 2) he should have approached his supervisor and asked him whether the beam capacity was adequate to lift the roll. These actions would have taken five minutes at most. His action cannot be seen as mere negligence, but as wanton and reckless behavior, subjecting him to the discipline outlined in the contract."

The Company contends that its discharge of Mr. Mabry is an appropriate discipline under the contract. Disagreeing with the Union that discharge is too severe a penalty in this matter, the Company claims that NIAGARA FRONTIER TRANSIT SYSTEM, 24 LA 783, 785 (THOMPSON 1955) supports the proposition that the employer is not required to apply the principle of progressive discipline in every case.

The Company additionally cites WALT DISNEY WORLD COMPANY, 62 LA 789 (OPPENHEIM 1974) as an example where an arbitrator upheld the discharge of *nineteen employees* for participation in a wildcat strike. The arbitrator found their actions to constitute insubordination and the contract specifically listed "insubordination" as cause for dismissal.

The Company next notes that Arbitrator Moore sustained the grievant's discharge for insubordination in CHROMALLOY DIVISION – OKLAHOMA, 67 LA 1310 (MOORE 1977), even though the Union had argued that discharge was too severe a penalty. Arbitrator Moore found that the contract spelled out that any employee who refused or failed to perform the work assigned would be discharged.

Finally, the Company cites AIR PRODUCTS & CHEMICALS, INC., 80 LA 393 (RICHARD 1983) in support of the principle that when the contract language is clear and the conduct by the grievant warrants the discipline stated in the contract, the discipline must be upheld. In this case, Arbitrator William L. Richard upheld the discharge of a driver who caused substantial damage to the company's equipment when the tractor-trailer he was driving overturned as he made an unlawful lane change to try to compensate for his excessive speed around a curve. Although the Union also argued that faulty equipment contributed to the accident, the arbitrator found faulty equipment did not absolve the grievant from his offense.

The Company believes the AIR PRODUCTS case relates to the instant matter. According to the Company, once the grievant found the scale was not operating, he should have contacted a maintenance employee to get the scale fixed. Just because the scale batteries were dead doesn't mean the grievant had the right to assume the beam was of adequate size to lift the roll.

The Company asserts that Mr. Mabry was properly trained in the proper procedure for loading rolls on beams. The Company first points to the hearing testimony of its Manufacturing Manager, Gerald Poss. Mr. Poss stated that all employees are trained to lift rolls, both by video and hands-on, that the trainer is Jerry Riehl, and that the Company offers safety and safety policy training. Mr. Poss noted that Mr. Mabry's signature was on a sheet attesting to his attendance at certain of this training.

The Company next points to the testimony of its primary trainer, Jerry Riehl. Mr. Riehl said he recalled the hands-on overhead crane training he provided to Mr. Mabry. Mr. Riehl then generally recounted what topics are covered in the company's hands-on overhead crane training, including using the proper beam for the proper load, weighing rolls, and operating the scales.

The Company also points to the job description for Mr. Mabry's position: "must know how to operate a forklift, overhead crane, and jib hoist," and argues that weighing rolls is a requirement to effectively operate an overhead crane.

The Company denies that it " . . . has condoned the alleged practice of allowing employees to routinely lift rolls in excess of the weight limits on each of the beams." It recalls Mr. Poss stating that employees have no discretion in this matter, but must obtain the permission of their supervisor.

It also quotes Company Trainer Jerry Riehl's testimony: 1) Mr. Riehl professes to know of no situation where supervisors told employees that they could make the decision to lift a roll weighing more than the weight capacity of the lifting beam; 2) instances where employees have exceeded weight rating on beams are uncommon – maybe once or twice a year; 3) in the instances where employees have lifted rolls with weights in excess of the beam capacity, Mr. Riehl believes permission has been given by the supervisor.

The Company also quotes exerpts from other witnesses (Mssrs. Van Handel, Pingel) in support of its contention that employees are supposed to ask supervisors for permission to exceed beam weight ratings. The Company argues stridently that both the Union and Company witnesses admit management has never given employees permission to totally disregard the proper procedures for lifting rolls."

The Company notes that no supervisor was ever identified as knowing about the practice of using improper beams and doing nothing about it. Three arbitration awards are cited in support of the proposition that no past practice exists if management is unaware of the practice.

Finally, Mr. Mabry is again characterized as reckless in that he was aware of the proper procedure, but disregarded it. Noting that other employees have also experienced inoperative scales, the Company concludes that Mr. Mabry's experience was not unique and he should have sought a supervisor. The question is not whether Mr. Mabry was trained how to change batteries in the scale, according to the Company, but whether Mr. Mabry was aware that the roll needed to be weighed prior to being placed on the beam.

The Company again asserts the basis for its belief that Mr. Mabry's conduct was reckless: "(t)he reckless conduct occurred when the Grievant determined that the scale was not working and then proceeded to lift the roll with the beam without weighing the roll."

According to the Company, "(t)his is not a case where Mabry thought, 'Oh, damn, I forgot to weigh the roll' after the beam had buckled and the roll fell. Rather, this is a case of recklessness characterized by an attitude of, 'Oh, what the hell, let's lift the roll anyway,' after he knew the scale wouldn't work."

The Company summarized its case: "(t)he Grievant was properly trained; was experienced at lifting rolls and operating cranes; admitted he did not check with maintenance after he found out the scale was not working."

"Such reckless behavior justifies termination according to arbitral precedent and the Work Rules stated in the contract," the Company concludes.

Union

The Union claims there is no written shop rule that requires employees to seek supervisory permission to exceed lifting beam capacity. The Union further points to testimony of plant employees that they regularly lifted rolls in excess of 30,000 to 40,000 pounds with the 12-ton yellow beam. Based on the openness of the shop floor and the daily floor presence of the shift supervisors, union witnesses believe the supervisors knew of this practice.

The Union also believes it is instructive that no employee has ever been warned by a supervisor not to use a lifting-beam to lift a roll with a weight in excess of the beam's weight rating.

The Union argues that Mr. Mabry is not guilty of either disobedience or gross insubordination because he did not disobey any directive from his supervisor. Citing arbitral precedents that define insubordination as "failure to submit to authority" or a "refusal to carry out an order," the Union contends that Mr. Mabry's conduct does not measure up to these definitions.

The Union points out that on the evening of June 25, 1997, Mr. Mabry was doing only what he was told - assisting Mr. Novac in lifting and moving the Appleton Papers roll. Moreover, according to the Union, Mr. Mabry did not receive any direct orders relating to that task.

According to the Union, Supervisor Pingel didn't even speak to Mr. Mabry about the Appleton Paper roll job. The Union states that Supervisor Pingel gave the Appleton Paper roll assignment to Mr. Novak. Mr. Mabry became involved only because Mr. Pingel had directed Mr. Novak to ask Mabry for help if Novak needed any. Thus, says the Union, Supervisor Pingel failed to give either Mr. Novak or Mr. Mabry any instructions on how to move the Appleton Paper roll.

The Union further argues that there was no shop policy that required Mr. Mabry to obtain his supervisor's permission to exceed the lifting beam's weight rating. The Union notes the admission of KRC that no such rule exists in writing, and believes hearing testimony establishes that employees routinely used the 12-ton yellow beam to lift rolls weighing 30,000 to 40,000 pounds.

No one ever told Mr. Mabry that he needed to get his supervisor's permission to lift a roll that weighed more than the lifting beam's weight rating, according to the Union. The Union asserts that Mr. Mabry gained most of his training on lifting beams through on-the-job experience, and observed other employees use the yellow 12-ton lifting beam to lift rolls far in excess of its weight rating. Thus, according to the Union, it is unfair to charge Mr. Mabry with knowledge of a work rule that was never communicated to him. As far as Mr. Mabry was concerned, says the Union, he was simply following a general shop practice, apparently condoned by management, when he lifted the Appleton Papers roll with the yellow 12-ton beam.

The Union also denies that Mr. Mabry willfully or recklessly damaged the Appleton Papers roll and the yellow lifting beam. "Reckless," says the Union, "means more than a simple mistake . . . to be reckless the conduct must be such as to evince disregard of or indifference to consequences under circumstances involving danger to life or safety of others." *CELANESE TRUCKING DIVISION*, 90 LA 819, 823 (NOLAN 1988). "Willful behavior," continues the Union, "requires a finding that the grievant acted 'with knowledge that the conduct for which he was disciplined was prohibited conduct and with the intention to go forward notwithstanding that knowledge.'" Mr. Mabry clearly lacked the intent required for a finding of willful or reckless conduct, the Union states.

The Union also asserts that the fact that a roll fell should not imply that something wrong was done. Therefore, the Union argues, just because there was an accident involving significant property damage doesn't mean the grievant was responsible, and cites *Dietrich Industries,* 83 LA 287 (Abrams 1984) in support of this proposition.

The Union also argues that a discharge based purely on hindsight should not be sustained, citing PEPSI-COLA BOTTLING CO., 79 LA 597 (HANNAN 1982). The Union points out that the *Pepsi* case also differentiates between a mistake in judgment and a failure to do one's job at all or carelessness in the sense of insufficient attention to duty to perform according to minimum standards.

The Union argues that Mr. Mabry had seen the yellow 12-ton beam routinely used by other employees to lift rolls weighing 30,000 or 40,000 pounds; that Mr. Mabry believed the Appleton Papers roll weighed only 40,000 pounds and was unaware of its actual weight. Thus, says the Union, Mr. Mabry's actions were consistent with his knowledge of standard shop procedure and cannot be deemed reckless or willful.

The Union points out that Mr. Mabry had been a helper for less than a year when the incident in question took place, and that his training on the use of cranes did not include instruction

on the use of lifting beams. The Union adds that the Company's own records demonstrate that Mr. Mabry was not trained to the satisfaction of his supervisor in the use of overhead cranes. According

to the Union, the only instruction Mr. Mabry received in the use of beams was what he learned working on the shop floor; there he saw experienced employees using the yellow 12-ton beam to lift rolls that weighed 30,000 to 40,000 pounds.

The Union observes that Mr. Mabry never suspected that the Appleton Papers roll weighed any more than any of the other overweight rolls he had seen hanging from the yellow beam. Mr. Mabry's error in judgment in estimating the roll weight, argues the Union, does not rise to the level of willful or reckless conduct but is mere negligence at most. The ability to estimate the weight of a roll accurately on sight comes only with experience – experience that Mr. Mabry did not yet have, continues the Union. Perhaps Mr. Mabry's mistake was poor judgment or even ordinary negligence, but it was not willful or reckless, and does not constitute grounds for termination.

Continuing in this vein, the Union posits that when Mr. Mabry failed to obtain a scale reading, there was no way for him to know that the only thing wrong with the scale was a dead battery, for the "low battery" light will light only prior to the battery going completely dead. The Union notes that the shop safety committee had regularly found the Weightronic scales to function improperly throughout the plant.

The Union points to Mr. Mabry's attempt to weigh the roll. It asserts his decision to attempt to lift the roll even though the scale wasn't working was based on his sincere, though mistaken, belief that the roll was within the range of weights he regularly saw being lifted by the yellow beam.

The Union goes on to argue that the accident may have occurred even if the scale had been functioning. The Union reasons that although the Company contends that the roll need be raised only an eight of an inch from the roll to be weighed, the size of the rolls make it difficult to tell exactly how far off the floor the rolls may be. Thus, says the Union, Mr. Mabry is not guilty of willful and reckless conduct simply because the yellow beam didn't buckle when he lifted it to weigh it, but did buckle when he attempted to move the roll at a height of only three feet.

Moreover, asserts the Union, even if there was a shop rule requiring employees to seek supervisory permission to lift loads of excessive weight, shop management bears some of the responsibility for the accident on June 25 because management had condoned routine violation of the rule. The Union notes that the yellow 12-ton beam was most commonly used because it was the right length to handle most rolls coming into the shop, even if the roll exceeded the weight rating of the beam. The Union claims that supervisors were clearly aware of the common practice to use the yellow beam to lift weights in excess of the stated beam rating. As an example, the Union points to the 50,000 pound Glatfelter roll that plant employee Gary Van Handel testified he regularly lifted with the yellow beam in the presence of his supervisor, without asking permission.

The Union notes the openness of the shop floor extends for its entire length. Unless supervisors are blind, asserts the Union, they must know the yellow beam's weight rating is regularly exceeded. If a two-year employee (Maintenance Man Lewis Welsh) has learned of this practice, the Union argues that more seasoned supervisors must also know it, as well.

The Union cites SAFEWAY STORES, 95 LA 63, 68 (LEVAK 1990) in support of the principle that "(w)hen there is clear evidence of widespread violation of a rule one can conclude that the company reasonably 'should have known' or 'must have known' what was going on." A similar results was reached in EBERLE TANNING CO., 71 LA 302 (SLOAN 1978) also cited by the Union. In the *Eberle* case 30-day suspensions for operating a radial arm saw without a safety guard in place were reduced because management personnel were in the shop area on a daily basis and thus in a position to observe the absence of the safety guard.

The Union points out that Mssrs. Mabry and Novak are the only employees to ever be disciplined for exceeding beam weight rating without getting supervisory permission. The Union believes it is arbitrary to weight the consequences only if they are realized, but ignore them if, through good fortune, they are minimized or avoided. The Union asserts that the weight of the evidence points to a general shop practice of lifting overweight rolls without first obtaining supervisory permission. "A rule honored in the breach can hardly be deemed binding," contends the Union.

Finally, the Union notes that no employee has ever been disciplined for damaging company or customer property. The Union cites a 1990 incident in which a suction box was dropped from a crane damaging both the box and a customer's roll on which the box had fallen: although management was aware of the incident, no discipline was imposed.

Company Reply

In response, the Company contends that "each and every one" of the witnesses" the Union called to the stand had to " . . . admit that (he) knew of no instance in which any supervisor knew of the alleged practice." This, adds, the Company, is totally consistent with the testimony of the witnesses called by the Company.

The Company also attempts to distinguish the *Safeway Stores*, 95 LA 63 (Levak 1990) cited by the Union from the instant matter in four ways. First, the Company asserts, the arbitrator in *Safeway* clearly states the "should have known" test is difficult to apply, and doesn't apply it in his case. Second, according to the Company, the *Safeway* arbitrator based his decision on his conclusion that management "expressly and impliedly" led store clerks to violate the rule, but there is no evidence in the instant case that management did the same. Third, the *Safeway* arbitrator found lax enforcement of company policy, whereas management was unaware of policy violations in the instant matter. Fourth, the *Safeway* case is not decided on the "should have known" standard,

but on proof that managers expressly failed to enforce the policy. That, says the Company, is not the case here.

The Company also believes that *Eberle Tanning Co.*, 71 LA 302 (Sloan 1978) can also be distinguished. In *Eberle*, a union witness testified without contradiction that a supervisor saw him

use the radial saw without the guard at least twice. The Company states no such uncontested testimony was introduced in the instant matter.

The Company disagrees with another part of the Union's argument as well. The Company points to the Union argument that Mr. Mabry was following practice when he lifted the roll with an under-capacity beam. The Company finds the Union's later argument that Mr. Mabry may have been negligent to be inconsistent with the former argument. "(I)f Mabry was following the practice, then it wouldn't have been negligence," states the Company.

The Company resumes its attack on what it calls the Union's claim that management "should have known." The Company asserts that supervisors don't spend most of their time looking at rolls being lifted into lathes and roll-serving machines. The Company also found fault that the Union submitted no information showing that employees spend anymore than a few minutes a day moving rolls.

The Company also contradicts the Union's claim that one could see the length of the shop without obstruction. The Company submits that while the beam may be visible from one end to the other, the roll would be visible only during the brief period of time it is being moved.

Moreover, says the Company, there is no evidence that supervisors are always around when rolls are lifted.

The Company emphasizes the only way an employee can accurately know the weight of a roll is to weigh it.

The Company also notes that the testimony of a Union witness (Mike Gosz) about rolls being lifted in excess of beam capacity referenced only the time before the beams were rated, approximately two years prior to the hearing.

According to the Company, Mr. Mabry's admissions alone constitute 99% of the relevant evidence in this case.

The Company also disagrees with Union arguments about Mr. Mabry not being trained. The Company claims the Union misrepresents Mr. Mabry's training. According to the Company, Exhibit 19, p. 2 indicates that Mr. Mabry successfully completed his training on February 17, 1997. The Company also believes that Employer's Exhibit 21 documents Mr. Mabry's hands-on training with Jerry Riehl. Employer's Exhibit 21 recites that Mr. Mabry has had hands-on training in the

use of overhead bridge cranes and visual inspection techniques before use. It is signed by Mr. Riehl and Mr. Mabry.

The Company contends that the issue is whether Mr. Mabry should have weighed the roll; the Union's focus on whether Mr. Mabry knew he should obtain permission from a supervisor is

another issue. All Mr. Mabry had to do was find a maintenance person to fix the scale, says the Company.

The Company also underlines that even though the Union, in its brief, indicates there was no shop policy requiring employees to obtain permission from a supervisor before he lifted a roll exceeded the beams capacity, Union witness testified they ask permission to do so.

The Company makes the point that just as an automobile driver presumes he or she is to remain under the miles-per-hour signs, employees seeing that the capacity of a beam is 24,000 pounds should be similarly guided.

While the Company attacks the credibility of witnesses called to testify by the Union the Company concedes that "(t)o their credit the Union witnesses did not lie on cross-examination when they were confronted with the ultimate 'yes' or 'no' question."

The Company finds Mr. Mabry's testimony "candid and truthful" (in that) "he admitted he acted contrary to established procedures for lifting rolls in the plant."

Finally, the Company is not impressed by the Union's argument that the Company had not disciplined employees in previous similar situations. The Company is upset that that it hadn't received Union Exhibit 5 (an account of the dropped suction box incident) until hearing. The Company also asserts that Union witness Mike Gosz testified no negligence was found in that incident and that in any event it didn't involve lifting a roll with the wrong beam.

In closing, the Company urges that Mr. Mabry's fellow workers may have done him a disservice if they told him to violate work shop procedures, but that is between him and his brothers, not between Mr. Mabry and the Company.

Union Reply

The Union finds three fundamental flaws in the Company's argument: 1) although the Company contends Mr. Mabry was reckless, it failed to present evidence that Mr. Mabry disregarded a known risk; 2) the company's argument that there is no authority for reduction of penalty ignores the contractual provisions for negligence; and 3) the Company has erroneously stated that Mr. Mabry received adequate company training in the use of cranes and lifting devices when, in fact, Mr. Mabry received his practical job knowledge by working with other employees, not company instruction

The Union asserts that although the Company has attempted to characterize Mr. Mabry's attitude at the time he lifted the Appleton Papers roll, it has not presented any evidence as to Mr. Mabry's state of mind. The Union points at the account given by the Company ("Oh, what the hell, let's lift the roll anyway") as a fictionalized version, not supported by any witness.

The Union believes the only credible testimony on Mr. Mabry's state of mind is the testimony of Mr. Mabry. As to that, Mr. Mabry stated his honest belief that he was lifting a roll that weighed about 40,000 pounds. He had seen the yellow 12-ton beam lift 50,000 pounds and lifted what he thought was a 40,000 pound roll in accordance with common shop practice, according to the Union.

The Union scores the Company for misstating Mr. Mabry's testimony as constituting an admission that he was aware of the requirement that he see a supervisor if unsure as to whether a beam will support a roll. The Union describes the grievant's testimony as stating that he had never been told by management that he needed permission to exceed the written weight capacity of a lifting beam.

The Union points to Mr. Mabry's testimony that he'd seen the same beam lift 30,000 to 40,000 pound rolls every day. The Union attributes his failure to estimate the weight of the Appleton Papers roll accurately to his short tenure as a helper. That, says the Union, is only ordinary negligence.

The Union takes issue with the Company's assertion that termination is the appropriate penalty in the case. The Union states that the cases cited by the Company in support of the proposition that the penalty of discharge may not be reduced by an arbitrator (if the penalty is required by the contract) only apply if the employee is found to have committed the offense for which termination is required.

In the instant case, however, the Union argues that that the Company has failed to prove reckless or willful conduct. The Union cites *Celanese Trucking Division*, 90 LA 819, 824 (Nolan 1988) to support its contention that "simple negligence is a 'lesser included offense' to a charge of recklessness." Mr. Mabry, submits the Union, at most is guilty of negligent damage to property. As to punishment for that, the Union asserts, the parties have contractually agreed to apply the steps of progressive discipline to employee negligence.

The Union contends that the training Mr. Mabry received from Mssrs. Riehl and Cox was inadequate. He learned the basics about crane operation from maintenance leadman and primary trainer Jerry Riehl. He received a video presentation from Jim Cox. The training from Mr. Riehl did not include use of the lifting beams; the training video explained the weight ratings and proper use of the cranes and slings. No one, however, even the person who signed Mr. Mabry's training card, physically demonstrated the use of the lifting beams with the overhead crane, according to the Union.

In summary, the Union argues that Mr. Mabry received basic training in crane operation from Mssrs. Riehl and Cox; he learned the practical side of the job from his co-employees in the plant. Mr. Mabry used the general shop procedure when he lifted the Appleton Papers roll with the yellow 12-ton lifting beam, the Union states. His failure to correctly estimate the weight of the roll was ordinary negligence punishable by a warning.

DISCUSSION

The Company seeks to justify its firing of the grievant on the grounds he engaged in "willful or reckless destruction or damage to company or customer property." The Union defends the grievant from the Company's accusation, contending that at most the grievant was guilty of negligence.

The Company offers a credible definition of the term "reckless" which it finds in *The Random House College Dictionary*, Revised Edition, (1975).

> **1.** utterly unconcerned about the consequences of some action; without caution; careless.
> **2.** Characterized or proceeding from such carelessness.

The same term is defined in *New Webster's Dictionary and Thesaurus of the English Language,* Lexicon Publications (1975) as "wildly careless, indifferent to danger."

Webster's also defines the term "willful" as "by intention, not accidental, *willful damage* // acting according to one's own desire, regardless of the dictates of others or of reason."

In my view, none of these definitions accurately describe the actions of Mr. Mabry on June 25, 1997. Certainly Mr. Mabry was a player in the third shift plant mishap involving the Appleton Papers roll on June 25, 1997. But his role, at best, was both small and fortuitous. It strikes me as neither "willful" nor "reckless" under any of the definitions listed.

At the time of the accident, Mr. Mabry had been a helper for less than one year. He had had no direct communication with his shift supervisor about the Appleton Papers roll job. Instead, it was fellow-employee Bob Novak (to whom the job had been assigned) who called on Mr. Mabry for assistance.

When Mr. Mabry arrived, he found the Appleton Papers roll unmarked with any weight tonnage on it. Based on his past (albeit limited) experience with rolls of similar size, Mr. Mabry estimated the Appleton Papers roll to weigh about 40,000 pounds. Nonetheless, he still attempted to weigh the roll, but was unsuccessful due to what was later determined to be a dead battery in the scale.

Mr. Mabry also found the yellow 12-ton beam already in place. He had worked on the plant floor long enough to know that because of its length this was the "lifting-beam of choice" for most employees. Mr. Mabry had previously seen 40,000-pound rolls successfully lifted and moved using the yellow 12-ton beam. Indeed, he was aware that it was common, permissible shop practice to use the yellow 12-ton lifting beam to move rolls weighing 30,000 to 40,000 pounds. At hearing other shop employees validated Mr. Mabry's observations. Thus, on June 25, 1997, Mr. Mabry offered no

objection to using the 12-ton beam for lifting and moving the Appleton Papers roll that he believed to weigh 40,000 pounds.

In fact, when he noticed Mr. Novak was having trouble in fastening a lifting strap to one end of the roll, Mr. Mabry moved to assist him. This action, in itself, is significant, for it does not appear to be the action of a "willful" or "reckless" employee, indifferent to possible damage to company or customer property. I interpret it, instead, as the action of an conscientious employee trying to make sure that the lifting strap was properly secured so the roll could not slide free.

At hearing, Mr. Mabry convincing claimed he was unaware that using a lifting-beam for rolls weighing more than the weight capacity printed on the beam required the permission of his supervisor. Mr. Mabry's testimony apparently – though not necessarily - contradicts that of Company trainer Jerry Riehl who testified that he recalled training Mr. Mabry. But Mr. Riehl's testimony in large part appears to be a general outline of topics he covers with trainees, and is not specific as to what he told Mr. Mabry. Mr. Mabry, on the other hand*, is* specific and credible on the point that his training did not include the operation of the beams.

Company trainer Jerry Riehl also testified he didn't discuss "safety ratings" of the beams with trainees (i.e., how much weight the beam could *actually* support). He didn't have to. As plant employees became aware that their supervisors were occasionally authorizing the use of under-capacity lifting-beams, it seems likely they began to understand that the beams had a greater weight tolerances than those printed on them. Just as experienced motorists learn to what extent they can exceed the posted speed limit due to tacit (but well-understood) tolerance of area traffic enforcement officers, the record suggests that KRC employees became educated as to allowable lifting-beam weight tolerances.

I am satisfied that at the time of the Appleton Papers roll mishap, KRC employees, including Mr. Mabry, believed they had some latitude to lift rolls weighing more than the weight capacity of the lifting beams employed without first seeking permission of their supervisor. Sworn employee testimony is unequivocal on this point (though no one seemed able to explain the genesis of this practice). Clearly, it had some limits, for occasionally employees did seek permission. Nonetheless, given the frequency of the occurrences where beam capacity was exceeded without permission, the practice had become a part of the KRC shop culture.

Under these circumstances it strains credulity to believe the shift supervisors were unaware of what was going on. Yet, no discipline was awarded until the June 25, 1997 mishap occurred and property damage resulted! At the very least, there appears to have been an enforcement laxness

with respect to what the Company now claims was its uniform policy of requiring supervisory permission to lift rolls exceeding beam capacity. For these reasons I am imputing constructive knowledge of these occurrences to the Company. 1/

1/ See Safeway Stores, 95 LA 63, 68 (Levak 1990). "Furthermore, the lax enforcement defense can be raised even where management lacks actual knowledge of the practice of non-rule enforcement. As is stated in

Koven and Smith, Just Cause: The Seven Tests, Kendall/Hunt, 5 at p. 316: 'The 'should have known' test: But what if company officials swear up and down that they knew of no drinking incidents and the union cannot show that any supervisor knew or condoned drinking? Suppose further that the union can prove that drinking has been going on to such an extent that it is hard to believe that management did not know. We come then to the 'should have known' test – what lawyers like to call 'constructive knowledge.' What this means is that where there is clear evidence of widespread violation of a rule, one can conclude that the company reasonably 'should have known' or 'must have known' what was going on."

At least by implication the Company appears to have recognized that the accident could have been prevented if the tonnage weight of the Appleton Papers roll had been written on it. To its credit, the Company instituted a new policy following this accident under which all rolls are now weighed when unloaded from the delivery truck *and the weight then written on the roll.* This policy appears to have directly resulted from the June 25 misfortune. Had that policy been in place on June 25, 1997, it seems unlikely that any accident involving the Appleton Papers roll would have occurred.

It is also instructive that the third-shift supervisor, Mr. Pingel, had not seen fit to provide Mr. Novac (to whom he had assigned the task of moving the Appleton Papers roll) with any cautionary instructions. Mr. Pingel, after all, was a ten-year employee of the Company. Presumably Mr. Pingel had seen the roll. If he recognized it as having been previously serviced by the Company, he must have known it was unusually heavy. Yet no cautionary alert or instructions were issued. Mr. Novac was on his own.

On the other hand, given the apparently deceptive weight of the roll, perhaps veteran-employee (and supervisor) Pingel simply made the same mistake as rookie-employee Mabry and under-estimated it. (In his testimony Mr. Pingel acknowledged that one could get "some idea" of a roll's weight by observing its size.) If so, that might explain why Mr. Pingel didn't give any cautionary instructions to Mr. Novac as to how to move the roll. 2/

2/ Both alternatives, of course, are mere speculation, and the record gives no hint as to the plausibility of either. Neither does the record indicate that the Company made any finding of fault as to Mr. Pingel. Mr. Pingel, of course, is no longer a supervisor, but he claims his demotion was not related to the mishap of June 25, 1997 that occurred on his shift.

It is, of course, regrettable that damage to both company and customer property occurred. But as the Union argues, "(s)imply because there was an accident involving significant property damage does not mean the grievant was responsible." *Dietrich Industries, Inc*., 83 LA 287-289 (Abrams 1984). Neither does it necessarily mean that the grievant's conduct was "willful" or "reckless."

Arbitrator W. L. Richard reached much the same conclusion:

> The Arbitrator agrees to the extent that the seriousness of the consequences (accident), whether realized and actual or merely potential and inchoate, must be considered in determining the severity of the employee's breach of duty and the severity of the appropriate disciplinary response, but it seems to this Arbitrator to be arbitrary to weight the consequences only if they are realized, and ignore them if, through good fortune, they are minimized or avoided altogether. Under such a practice, an employee guilty of gross negligence involving a total disregard for his employer's property or the safety of others, with the likely potential for resulting fatalities or severe damages, may go uncorrected because through some unforeseen good fortune the likely result didn't pertain, while an employee who commits the least degree of ordinary negligence may be severely punished because, due to some fluke, the results are disastrous and of far greater magnitude than could be foreseen. That offends this Arbitrator's sense of fair play and justice." 3/

3/ T.W. Recreational Services, 93 LA 302, 308-9 (Richards 1989). Arbitrator Richards goes on to express his belief that all employees guilty of negligence under the same circumstances, or of the same potential for damages to persons or party, whether or not such damages occur, should be disciplined to the same degree of severity, unless something in their records gives legitimate reason for disparate treatment.

That is not to say the grievant is blameless. This is only to say his conduct falls far short of being "willful or reckless." It does, however, constitute ordinary negligence.

It is a " . . .well recognized principle that negligence consists of failing to use that degree of ordinary care which would be exercised by 'the great mass of mankind' under the same or similar circumstances . . ." 4/

***4/ Rockweit v. Senecal*, 197 Wis. 2d 409, 424, 541 N.W. 2d 575 (1995).**

> "A person fails to exercise ordinary care when, without intending to do any wrong, he does an act or omits a precaution under circumstances in which a man of ordinary intelligence and prudence ought reasonably to foresee that such act or omission will subject him or his property, or the person of property of another, to an unreasonable risk of injury or damage." 5/

5/ ***SHANNON V. SHANNON, 150 WIS. 2D 434, 443-44, 442 N.W. 2D 25 (1989), cited with approval in ROCKWEIT V. SENECAL, SUPRA***

Notwithstanding Mr. Mabry's good faith, albeit erroneous, estimate of the Appleton Papers roll weight, he understood that he should weigh the roll before attempting to lift it to a height suitable for moving it. He tried to weigh it. The scale didn't register. As was later learned, the battery was so dead so that even the "weak battery" signal on the scale wasn't activated. In my opinion, Mr. Mabry's failure to contact a maintenance person to repair the scale so the roll could be weighed before being lifted was contrary to the procedure he had apparently absorbed. Such omission was negligence – and would be even if there had been no unfortunate consequences. Indeed, inasmuch as the procedure was undoubtedly designed for reasons of safety, its violation appears to constitute negligence *per se*.

Mr. Mabry's negligence is probably shared with others, although it is unlikely they could be identified at this time. Thus, one can only speculate for what length of time the scale had been inoperative if the battery was so dead as to produce not even a "weak battery" signal. One can only wonder how many other overweight rolls had been lifted with the same lifting beam while the scale battery was dead.

While these speculations do not absolve Mr. Mabry of his negligence, they are helpful in putting his action in proper perspective. Like others preceding him who may have successfully lifted a roll despite the battery-dead scale, Mr. Mabry simply had no reason to anticipate the disastrous result that ensued.

As to remedy, both parties appear to agree that in the event a finding of either "willful or reckless destruction or damage to company or customer property" or "negligence resulting in . .. . damaging of equipment . . ." the appropriate penalties are set forth in the Work Rules. The Company correctly argues that the Work Rules offer little room for arbitral discretion should a finding of "willful or reckless" conduct have been made. In similar fashion, the Rules offer only limited discretion when an employee is found to have been negligent. 6/

6/ In effect, the Work Rules provide for a form of progressive discipline. Niagara Frontier Transit System, 24 LA 783,785 (Thompson 1955), which is cited by the Company as support for the proposition that the employer is not required to apply the principles of progressive discipline in every case, contains an excellent description of "progressive discipline:"

In industrial practice discipline is often "progressive or "corrective" in nature. Warning is tried before suspension; suspension before discharge. Penalties are designed to correct if possible. While theories and practices of "progressive" or "corrective" discipline may be in wide use, it does not follow that every Company must, in the absence of contract, adopt such views. Every business and industry has its own peculiar conditions. An arbitrator should be slow to substitute his own judgment as to the appropriateness of penalties on the basis of theories which seem to have wide appeal.

There is also the consideration that ideas of "progressive" or "corrective" discipline may not be applicable when the violation of a regulation on the part of an employee involves money. Money is basic and central to the whole economic structure of modern society. Morally and ethically fraudulent behavior in financial relationships is subject to strong emotional disapproval. It seems more appropriate

to apply the idea of "progressive" discipline to loafing, negligence, incompetence, even damage to machines and equipment, etc., than to infractions which more or less deprive the Company directly. (Emphasis supplied.)

Under the terms of Work Rules governing the parties, negligence resulting in damage to property is a Level 3, Work Rule 4 violation. A first offense is subject to a written or verbal warning.

Accordingly, under all of the circumstances and based on the considerations expressed above, I deem a written warning appropriate discipline in this matter.

AWARD

The grievance is sustained to the extent that the discipline imposed on the grievant is reduced to a written reprimand. The grievant shall be made whole by reinstatement with full back pay, full seniority, and full benefits under the contract, subject to any set-off by reason of alternate employment since discharge by the Employer.

I am retaining jurisdiction in this matter for a period of forty-five (45) days in the event either party has any questions as to the remedy herein.

Dated at Madison, Wisconsin this 24th day of June, 1998.

A. Henry Hempe /s/

A. Henry Hempe, Arbitrator