BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

OPEIU LOCAL NO. 9, AFL-CIO, CLC

and

**IRON WORKERS UNION,
LOCAL NO. 8 APPRENTICESHIP AND TRAINING FUND**

Case 1
No. 56787
A-5713

(Grievance of Deborah A. Quesada)

Appearances:

Mr. Tony Vanderbloemen, Business Manager, OPEIU Local 9, on behalf of Local 9.

Mr. Jack Martino, Secretary, Local 8, on behalf of the Employer.

ARBITRATION AWARD

The above-captioned parties, herein "Local 9" and "Employer", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Milwaukee, Wisconsin, on December 4, 1998. There, both parties agreed that I should retain my jurisdiction if the grievance is sustained and they then presented oral arguments in lieu of filing briefs. I then issued a "bench" decision, which this Award augments.

ISSUE

The parties agreed to the following issue:

Whether the Employer had just cause to terminate grievant Deborah A. Quesada and, if not, what is the appropriate remedy?

DISCUSSION

Grievant Quesada was employed as a Secretary/Office Manager from September 11, 1995, to July 10, 1998 (all dates herein refer to 1998), when she was terminated via a July 10 letter from Apprenticeship Coordinator Gilbert Toslek, her immediate boss, that stated:

. . .

> The events are as follows:
>
> The Business Manager of Ironworkers Local #8 was asked to speak with you on my behalf because of our inability to function as an effective team.
>
> The Joint Apprenticeship Committee was informed at the July meeting of the letter to Mr. Tony Vanderbloemen – Business Manager of O.P.E.I.U. #9, dated January 28th, 1998 outlining the need for trust and compatibility within a two person office.
>
> On behalf of the Trustee's of Local #8 Apprenticeship and Training fund, I was directed to dismiss you with all appropriate wages and benefits on Friday July 10th, 1998, due to the negative work environment between us.

. . .

The Employer maintains that it had just cause to terminate Quesada because of her inability to get along with Toslek. Local 9 disagrees, and claims that the Employer in any event did not follow progressive discipline before it fired Quesada.

The hearing established that Quesada and Toslek for some time had a stormy working relationship; that Toslek sometimes helped Quesada by giving her money; that Toslek at times went out of his way to praise Quesada's work (see Union Exhibits 1-6 which reflect Toslek's praise of Quesada's work); and that Toslek and Quesada sometimes bickered among themselves, so much so that Toslek earlier threatened to quit his position because of the difficulty he experienced in working with Quesada.

The hearing also revealed that the Employer did not follow progressive discipline before firing Quesada on July 10 even though Article X of the contract, entitled "Progressive Discipline", states:

Section 1. The Employer agrees that when disciplinary action is taken against an employee, discipline shall be corrective and progressive as listed below.

Step 1. Verbal warning;

Step 2. Written warning;

Step 3. Two (2) day suspension;

Step 4. Discharge.

Section 2. Any employee who is involved in a disciplinary action has the right to have a Union representative present. Any such action shall be subject to the grievance procedure.

Section 3. The disciplinary warning/s shall be removed from the employee's personnel file within nine (9) months providing there were no further violations which resulted in disciplinary action.

Elsewhere, Article XI, entitled "Discharge", contains a just cause requirement.

The Employer argues that it did follow progressive discipline because Quesada was earlier warned about her work via a January 28 letter from Toslek to OPEIU Representative Tony Vanderbloemen that stated:

. . .

Dear Sir:

This correspondence concerns O.P.E.I.U. Local #9 member Deborah Quesada, employed as Office Manager for Iron Workers Local #8 Joint Apprenticeship and Training Committee (J.A.T.C.) since September 1995.

On Wednesday, January 28, 1998, some simple communication was misinterpreted into a situation that is unacceptable by either Ms. Quesada or myself.

As there are only two (2) full-time salaried employees in the J.A.T.C. Office (the Office Manager and Apprenticeship Coordinator) there is little room for incompatibility or a negative environment. During her employment with the J.A.T.C. Ms. Quesada has indicated that she would be happier working elsewhere, which would seem to be the case.

> The current work environment is both difficult to work in and diminishes overall performance in the office.
>
> If there is not a noticeable improvement within the J.A.T.C. office, the Trustees will have to decide which employee they will continue to employ.
>
> Please keep this letter on file for reference.

. . .

While this letter obviously reflected Toslek's unhappiness with working with Quesada, nothing therein put Quesada on notice that she was being disciplined because of her alleged derelictions of duty. Hence, said letter did not constitute the kind of formal, progressive discipline mandated by Article X and the just cause requirement contained in Article XI.

Indeed, Toslek himself tacitly acknowledged that Quesada had not been disciplined earlier when he told Quesada on July 7 that he was giving her a verbal warning, which of course is the first step of the progressive disciplinary chain set forth in Article X. Quesada testified without contradiction that Toslek told her on July 7 that he was giving her a verbal warning and her testimony was corroborated by Union Steward Debra Dirge who also attended said July 7 meeting.

It therefore was a fundamental error – and a violation of Article X of the contract – when the Employer fired Quesada only three days later without first giving her a chance to improve her work by giving her the written warning and the two-day suspension mandated in Article X.

The Employer's failure to follow the progressive disciplinary chain spelled out in Article X also means that the Employer lacked just cause under Article XI of the contract to summarily terminate Quesada without first according her a reasonable opportunity to correct any perceived problems with her work.

To rectify that contractual breach, the Employer shall make Quesada whole by immediately offering to reinstate her to her former position and by paying to her all monies and benefits, including seniority, that she would have earned had she not been terminated, minus any money or other compensation that she would not have received but for her termination. Pursuant to the agreement of the parties, I shall retain my jurisdiction for at least sixty (60) days to resolve any questions that may arise over application of my Award.

In light of the above, it is my

AWARD

1. That the Employer lacked just cause to terminate grievant Deborah A. Quesada.

2. That to rectify said contractual breach, the Employer shall undertake the remedial action stated above.

3. That to resolve any questions that may arise over application of my Award, I shall retain my jurisdiction for at least sixty (60) days.

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

Amedeo Greco, Arbitrator

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