BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MIDWEST COCA-COLA BOTTLING COMPANY
(Eau Claire and Wausau, Wisconsin)

and

GENERAL TEAMSTERS UNION, LOCAL NO. 662

Case 50
No. 55791
A-5632

(Chad Dietsche grievance concerning floating holidays)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Attorney **Mr. John J. Brennan**, Milwaukee, Wisconsin, appearing on behalf of the Union.

Miller & Martin LLP, by Attorney **Mr. Ronald G. Ingham**, Chattanooga, Tennessee, appearing on behalf of the Company.

ARBITRATION AWARD

At the joint request of the Union and Company noted above, the Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz as Arbitrator to hear and decide a dispute concerning the above grievance, which dispute arose under the parties' 1995-97 Agreement (Agreement).

Pursuant to notice, the grievance dispute was heard by the Arbitrator at the Stoney Creek Inn in Rothschild, Wisconsin, on April 28, 1999. The proceedings were not transcribed, however, the parties agreed that the Arbitrator could maintain a cassette tape recording of the testimony and arguments for the Arbitrator's exclusive use in award preparation.

The parties' briefs were exchanged by the Arbitrator on May 28, 1999, marking the close of the hearing.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties did not agree on a statement of issues. At the hearing, the Union proposed that the issues be framed as follows:

> Does the Company violate the collective bargaining agreement by failing to pay remaining floating holidays at the time of employment termination? If so what is the appropriate remedy?

The Company proposed, instead, and the Union agreed, that the Arbitrator be authorized to frame the issues based on the evidence and arguments presented. In its brief, the Company posited the issues as follows:

> A. Whether there is any language in the labor contract which can assist the Union in imposing liability for floating holidays when an employe leaves employment?
>
> B. Whether the Union's inaction in failing to grieve this very issue on fifteen (15) or more discrete occasions over past years gives insight into what everyone knew and, in fact, knows the contract says?

Based on the evidence and arguments presented by the parties, the Arbitrator frames the issues in dispute in this matter as follows:

> 1. Did the Company violate the Agreement by failing to grant Chad Dietsche paid time off or pay for two floating holidays for calendar year 1997?
>
> 2. If so, what shall the remedy be?

PORTIONS OF THE AGREEMENT

ARTICLE V
HOLIDAYS

. . .

4.1 [5.1?] Recognized Holidays: The following days shall, for the purposes of this Contract, be recognized as Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In addition, the Employees will be granted three (3) floating Holidays during the calendar year. The Company agrees to inform the Employee if floating Holiday is approved no less than five (5) days prior to Holiday date taken, provided the request from the Employee is made at least seven (7) days in advance of the Holiday date.

4.2 [5.2?] Holiday Pay: For each above-recognized Holiday, each Employee will be paid eight (8) times his regular straight time hourly rate, provided he reports for work according to schedule on his last workday preceding and his first work day following said Holiday, unless otherwise excused by the Employer, except that a regular part-time Employee will be paid . . . .

. . .

If any Holiday falls within the . . . period after the week following an Employe's layoff due to lack of work or absence from work as a result of sickness or injury and such Employee is also recalled to work [and?] returns to work during the same . . . period and the employee did not receive any Holiday pay, then in such case he will receive an extra day's pay for each Holiday missed in the week in which he returns to work; . . . An Employe who was laid off because of lack of work or is sick or injured and is not recalled . . . to work within the fore-mentioned . . . period is not entitled to the extra pay upon his return. Under no circumstances shall the extra pay referred to herein be construed to be Holiday pay nor shall it be considered as hours worked for weekly overtime.

. . .

ARTICLE VI
VACATIONS - FUNERAL ALLOWANCE - SICK LEAVE

6.3 Vacation Accrual. All vacations earned must be taken by Employees and no Employee shall be entitled to vacation pay in lieu of vacation except, however, any Employee who has quit, been discharged, or laid off before he has worked his forty-five (45) weeks shall be entitled to vacation pay earned on a prorated basis, or at the rate of 1/45 of his vacation pay for each week worked up to a total of 45/45 or full vacation, provided such Employee has been employed for his first full year. There shall be no accumulation or carry-over of unused vacation from one vacation year to the next.

BACKGROUND

The Company is a soft drink distributor serving areas including Eau Claire and Wausau, Wisconsin. The Union represents various classifications of drivers, merchandisers and warehouse personnel employed by the Company. The Company and Union have been parties to a series of collective bargaining agreements, including the Agreement.

Prior to his voluntary resignation becoming effective on June 5, 1997, the Grievant, Chad Dietsche, worked as a Delivery Salesman for the Company's Wausau branch.

In his grievance dated June 3, 1997, giving rise to this proceeding, Grievant asserts that the Company violated Agreement Sec. "6.3 and all relevant articles" in that:

> On June 3, 1997 Chad was told he would not receive compensation for his remaining "floating holidays."
>
> He was also denied the time off when he requested it 7 days prior.
>
> [Settlement requested:] Full compensation for any and all lost benefits.

Company Employee Relations Manager Tanya L. Gilbertson wrote to the Union's Business Agents as follows on September 19, 1997:

> Please allow this letter to serve as a follow-up to our meeting on Wednesday, September 10, 1997. This letter is in regards to the grievance regarding paying Chad Dietsche his floating holidays when his employment ended with the Company on 6-5-97.

> We have researched this issue and have determined it has not been the Company's practice to pay floating holidays to an employee when they leave the Company. If an employee submits their voluntary notice of termination, it is not our practice to allow them to use all paid time off those remaining days/weeks so they do not lose it. If an employee requests time off during the period after notice has been given, it is granted at the discretion of the supervisor/manager. In addition, the Company does not feel it violated the collective bargaining agreement. The contract language states "Any employee who has quit, been discharged, or laid off before he has worked his forty-five (45) weeks shall be entitled to vacation pay earned on a pro-rated basis, or at the rate of 1/45 of his vacation pay for each week worked up to a total of 45/45 or full vacation." The contract does not address any payout provisions for floating holidays.
>
> Mr. Dietsche submitted approximately a two week notice for his voluntary resignation. Mr. Dietsche was allowed to take 1 of his floating holidays during that period, however, due to the Memorial Day holiday as well as the busy seasonal period, it was not practical to allow Mr. Dietsche to take all of his floating holidays during this period. The Company feels it was more than fair in honoring one day off as a paid floating holiday during his last two weeks and does not feel he is entitled to be paid an additional 2 floating holidays.
>
> If you have any further questions or concerns, please feel free to contact me . . . .

The grievance was ultimately submitted for arbitration as noted above. At the hearing, the Union presented testimony by Business Agent David Reardon. The Company cross-examined the Union's witness, entered various business records by stipulation, and rested. The Union recalled Reardon briefly on rebuttal, concluding the evidentiary hearing.

Over Company hearsay objections, Reardon testified about what a fellow Union Business Agent, Dan Alexander, told him had happened to him when he left the employ of the Company and went to work for the Union in 1995. According to Reardon, Alexander told him that when he left the Company he was paid not only vacation benefits but that he also had one unused floating holiday for which he requested and received pay, as well.

On cross-examination, Reardon testified that, in the rounds of contract negotiations with the Company that occurred both before and after the instant grievance was filed, the Union did not propose either specific floating holiday pay-out language such as appears in Agreement Article VI regarding vacations or catch-all payout language such as it has in contracts with some other employers. Reardon explained that the Union chose, instead, to rely on the language of Article V requiring that "Employees will be granted three (3) floating Holidays during the calendar year."

Reardon also testified that in the beverage industry, the ease or difficulty of scheduling vacation and floating holiday time off varies depending on the time of year because, for example, the Memorial Day and July 4 holidays can involve a doubling of the volume of beverage sales. Reardon further testified that the Agreement is permissive regarding when the floating holidays are taken; that the Company has made reasonable efforts to grant employes' floating holiday requests over the years; and that there have been no other grievances to his knowledge arising regarding Company denials of requests to take floating holidays.

The Company payroll system reports entered into evidence showed floating holiday benefits received by full time bargaining unit Wausau employes in the calendar year they left the Company's employ since the beginning of 1995. Of the 16 employes for whom such reports were presented 1/: four received zero floating holidays, four received one floating holiday, two received two floating holidays, six received three floating holidays, and two (Brian Antone and Dan Alexander) are shown as receiving four floating holidays. 2/ The documents also show that in addition to Alexander, four other employes (including Grievant) received one floating holiday benefit during their last two weeks of employment.

1/ Detail sheets were not presented for five employes who left the Company's employ within six months of being hired.

2/ The record does not establish why Antone and Alexander were shown as having been compensated for four floating holidays when Article V has referred at all relevant times to only three per calendar year. The Company's only explanation was that compensation for the fourth holiday was a mistake. As to Alexander, at least, Reardon offered the possible explanation that one of the entries recorded in the report as pay for a floating holiday might have, instead, constituted pay for work on a holiday.

Additional factual background is set forth in the positions of the parties and the discussion, below.

POSITION OF THE UNION

In its opening statement at the hearing, the Union asserted that the facts were as reflected in the grievance and answer, Joint Exhibits 2 and 3; that Agreement Article V unconditionally requires that ". . . Employees will be granted three (3) floating Holidays during the calendar year"; that employes therefore have the right to use all three floating holidays at any time during the calendar year subject only to the Employer's reasonable right to approve the particular day on which the floating holiday time off with pay is taken; and that when an employe quits, the days are an accrued benefit just like vacation; and that the relevant past practice evidence will support the Union's contentions in those regards.

In its brief, the Union argues that the evidence establishes that where an employe has asked for their remaining unused holidays at the time of a voluntary quit the employe has received them. The only individuals known to have asked are Alexander and Grievant. Unlike the Grievant, when Alexander protested the Company's original failure to pay, he was ultimately paid.

The Company's practice evidence shows that other individuals have not been paid for their floating holidays at the time of termination. However, the Company has not shown either that any of these individuals asked for their floating holidays at the time they left or that the Union was aware that these employes were going uncompensated for their accrued floating holidays. That practice evidence cannot bind the Union because the practice was not open and notorious and because the Union has not been shown to have known of or therefore acquiesced in it.

Because it is undisputed that the Grievant could have taken all of his floating holidays in January if he had chosen to do so, it follows that all three of his floating holidays constituted benefits that he had earned. The Company is penalizing Grievant for failing to take his floating holidays or to ask for the remaining ones until the "busy season." However, the Grievant's entitlement to time off with pay for those floating holidays or to holiday pay in lieu of the holidays cannot be erased at the Company's whim by virtue of the Company's denial of time off prior to the effective date of his voluntary quit. Citing MAHONING SPARKLE MARKETS, 91 LA 1366, 1371 (SHARPE, 1988)("While the [personal] holiday must be taken at a time when it is mutually agreeable to the Company and Employee, there is no substantive contractual limitation on entitlement to this benefit. It is, therefore, reasonable to interpret the personal holiday as an earned benefit to which employees who had not taken it were entitled when the company ceased business operations.") and STOWE-WOODWARD CO., unpublished (GRENIG, 10/11/93)(company ordered to pay holidays preceding vacation week preceding effective date of employe resignation despite "last day before/first day after" work requirement for holiday eligibility.)

The Grievant complied with his obligations under the Agreement. He submitted his holiday request at least seven days in advance of the date. His request was denied due, allegedly, to the fact that this was the Employer's busy season. That denial does not act as a forfeiture of his entitlement to pay in lieu of taking the day.

For those reasons, the Arbitrator should order the Company to pay Chad Dietsche for his two remaining 1997 floating holidays.

POSITION OF THE COMPANY

In its opening statement, the Company asserted that because no provision of the Agreement unconditionally vests employes with the right to three floating holidays, the Union is attempting to obtain something through arbitration that it has not obtained at the bargaining

table. Unlike the Article VI vacation accrual and prorata payout language, Article V regarding holidays contains no such provision. Rather, Article V requires that an employe request a floating holiday seven days before the requested time off and that the Company must respond with its approval or denial within five days of the requested time off. The Company's business is cyclical such that the Company cannot always grant floating holidays when they are requested. The Union's evidence relating to one employe being paid in lieu of taking a floating holiday off in connection with his termination cannot constitute a binding practice in the face of the Company's evidence that many other employes have left the Company without being paid for some or all of their unused floating holidays.

In its brief, the Company reiterates that the Agreement requires employes to request floating holidays at least seven days in advance and provides that the Company shall approve or deny such requests at least five days prior to the intended holiday. However, the Agreement is silent regarding what happens if an employe leaves the employ of the Company without having used one or more of the three floating holidays.

The Company records entered into evidence show that among the employes who left the Company since the beginning of 1995, some received three floating holidays but others received some of them and others received none of them. Yet, the only grievance on the subject is that filed by the Grievant in this case.

Granting the grievance in the circumstances of this case would create a holiday payout requirement where the parties have not chosen to put one into the Agreement. It would also eliminate the right of the Company to approve or deny requests for floating holidays which right is expressly recognized in Article V -- a right which Reardon admitted in his testimony that the Company has historically exercised reasonably.

For those reasons, the Arbitrator should deny the grievance in all respects.

DISCUSSION

For the Union to prevail on ISSUE 1, it must persuasively establish either that (1) the Agreement unconditionally guarantees employes paid time off or pay in lieu of paid time off for the three floating holidays per calendar year referred to in the first section of Article V; or that (2) in the circumstances of this case Grievant was nonetheless entitled to more floating holiday benefits than he received.

Are Floating Holidays Unconditionally Guaranteed?

The Agreement, in Sec. 6.3, expressly provides for a payout formula for unused vacation benefits applicable at the time of a voluntary quit or other termination of employment. By its terms, however, that section applies specifically to vacation and hence not

to floating holidays which are the subject of a separate Agreement Article. Accordingly, to the extent that the Grievant referred to and relied on Sec. 6.3 in his grievance, that reliance is misplaced.

The language that is applicable to this dispute is that contained in the first section of Article V. It provides that, in addition to the six named holidays, "the Employees will be granted three (3) floating Holidays during the calendar year. The Company agrees to inform the Employee if floating Holiday is approved no less than five (5) days prior to Holiday being taken, provided the request from the Employee is made at least seven (7) days in advance of the Holiday date."

That language gives the employe a right to request to take all three floating holidays off with pay at any time "during the calendar year," subject to the right of the Company to approve or disapprove the taking of the floating holiday on particular dates requested.

The Company's discretion in that regard is subject to the implied covenant of good faith and fair dealing which is ordinarily presumed to be a part of all agreements. E.g., St. Antoine (ed.) The Common Law of the Workplace -- The Views of Arbitrators, 75 (NAA/BNA, 1998) ("Modern American contract law teaches that every contract imposes on each party a duty of good faith in performing the agreement. . . . [A]rbitrators use the doctrine of good faith as an interpretive tool to define ambiguous contractual language in a way that prevents an employer or union from evading the spirit of the bargain . . . .") Accordingly, the Company cannot exercise its right to disapprove requests to take floating holidays off on particular days arbitrarily or in a bad faith effort to defeat the rights of an employe to enjoy the three floating holidays recognized in Article V.

The question arises, however, what if the Company has a legitimate operational basis for disapproving each of the days off that the employe requests in order to use all three floating holidays before the end of the calendar year or before the end of the employe's employment with the Company.

The Union's answer would apparently be that the agreement mandates that the three floating holidays "will be granted . . . during the calendar year"; that absent clear language to the contrary the parties must be presumed not to have intended those benefits to be subject to forfeiture; and that the employe must therefore either be given time off with pay or pay in lieu of paid time off.

The Company's answer would apparently be that the Agreement makes no provision for pay in lieu of paid time off from work; that time off with pay is available only on dates approved by the Company; that the employe has no right to Company approval as regards any date that the Company has a legitimate operational basis for disapproving; and that when the employe leaves the Company before taking all three floating holidays off, the employe has no right to time off or pay as regards the unused floating holidays.

The Arbitrator finds it appropriate to interpret the Agreement holiday language quoted above in the context of the Agreement as a whole and in a manner consistent with its evident purpose.

Reading the Agreement as a whole, it is notable that the parties expressly provided for a cash payout of vacation benefits upon termination but made no such provision concerning holidays. It is also notable that, in the second section of Article V, the parties expressly provided a holidays-related cash payment to employes returning to work from certain layoffs but made no such provision concerning employes whose employment has terminated.

In that context, the purpose of the parties' agreement to floating holidays appears to be to enable the employes to enjoy additional holiday time off from work without loss of pay, while enabling the Company to avoid scheduling the additional time off on dates when it would have a particularly adverse impact on Company operations or costs. The floating holidays language also appears to have been intended to make the entire annual floating holiday benefit available to be requested, approved and taken at any time during the calendar year, such that all three days of the benefit could theoretically be requested, approved and taken in January of the calendar year.

Where an employe chooses to resign from the Company's employ prior to the end of a calendar year without having taken floating holidays on dates that were requested and approved in accordance with the parties' above-noted mutual intentions, the employe thereby reduces the opportunities for the process contemplated by the parties to operate. To the extent that the employe has thereby caused a reduction in the opportunities for that contemplated process to achieve its objectives, it is not inequitable or unreasonable for the employe to run the risk of a consequential reduction or elimination of the benefit.

For those reasons, the Arbitrator concludes that the Agreement does not unconditionally guarantee employes paid time off or pay in lieu of time off for the three floating holidays per calendar year provided in Article V.

However, as noted above, the Company cannot exercise its right to disapprove requests to take floating holidays off on particular days arbitrarily or in a bad faith effort to defeat the rights of an employe to enjoy the three floating holidays recognized in Article V.

Did the Circumstances of this Case Entitle Grievant to More Floating Holidays Than He Received?

In this case, the basic facts giving rise to the grievance were not developed in detail at the hearing, nor were they described or analyzed in detail by the parties in their briefs. In his opening statement, Union Counsel stated that the above-quoted grievance and answer in Exhibits 2 and 3 accurately reflect the underlying fact situation. The Company's opening statement took issue only with the Union's proposed interpretation of the Agreement, not with

any of the underlying facts as reflected in Exhibits 2 and 3. Those documents were received into evidence by stipulation as joint exhibits. Beyond that, neither party presented a witness with first-hand knowledge of the facts, and the Company did not present any witnesses at all, leaving the Arbitrator with a rather thin evidentiary basis to work with. 3/

3/ For example, Reardon testified that he did not know whether Grievant had in fact requested a third floating holiday off.

Based on Joint Exhibits 2 and 3 and the record as a whole, the Arbitrator finds the underlying facts as follows. Grievant's "employment ended with the Company on 6-5-97." Prior to that date, he "submitted approximately a two week notice for his voluntary resignation." At the time he submitted that notice, Grievant had not taken any floating holidays in 1997. After giving his approximately two week notice, and at least "7 days prior" to filing the instant grievance on June 3, 1997, Grievant requested Company approval for his taking all three of his unused floating holidays off with pay prior to the effective date of his resignation. The record does not reveal whether Grievant requested that time off on particular dates or on any of his remaining work days with the Company. The Company approved and Grievant took one floating holiday off with pay prior to the end of his employment with the Company. The Company denied the Grievant's request for additional floating holiday time off "when he requested it." While there is some uncertainty about whether Grievant specifically requested his third floating holiday off when the Company denied his request to take his second, the Arbitrator finds that, in the face of the Company's denial of the second floating holiday off, a specific request for a third day off would have been futile. In its grievance answer, the Company's stated reason for that denial was that "due to the Memorial Day holiday as well as the busy seasonal period, it was not practical to allow [Grievant] to take all of his floating holidays during this period. The Company feels it was more than fair in honoring one day off as a paid floating holiday during his last two weeks and does not feel he is entitled to be paid an additional 2 floating holidays." The Company further informed Grievant on June 3, 1997, that "he would not receive compensation for his remaining 'floating holidays.'" The Company's stated reason for nonpayment of compensation for his remaining floating holidays was that unlike the vacation language in Sec. 6.3 cited in the grievance, "the contract does not address any payout provisions for floating holidays."

Reardon's testimony confirms the common sense notion that beverage industry sales and distribution activities are cyclical, with particularly high levels of activity surrounding, for example, the Memorial Day and July 4 holidays. The calendar reveals that in 1997 Memorial Day (May 30) fell on a Friday. By statute it was observed by state and municipal governments

in Wisconsin on the last Monday in May, which in 1997 was May 26. Sec. 45.49(1), Wis. Stats. (1995-96). Both that Monday and that Friday were well within the approximately two week period after Grievant gave his notice of intent to quit and before the end of Grievant's employment with the Company. In addition, "Memorial Day" is one of the fixed contractual holidays recognized by the parties in Article V of the Agreement.

The record also reveals that the Company has not pursued an arbitrary blanket policy of refusing to grant requests for floating time off to employes in the pay periods immediately preceding their resignations. It granted one of the floating holidays Grievant requested after giving his approximately two week notice. The payroll records also show that the Company approved one floating holiday for each of three other employes within the last two weeks preceding their voluntary terminations. In that regard, Reardon testified that, based on the limited extent to which he learns such information, employes typically give the Company two weeks notice of their intent to quit.

In all of the foregoing circumstances, the Arbitrator concludes that the evidence is sufficient to establish that the Company's denial of Grievant's remaining two days was not an arbitrary or bad faith exercise of the Company's right to approve or disapprove Grievant's requests to take those remaining days off prior to the effective date of his resignation. Grievant was not able to take the two unused floating holidays due to a combination of his decision to quit the Company on approximately two weeks notice given shortly before the contractual Memorial Day holiday, without having previously requested, obtained approval for, and taken any of his floating holidays; coupled with the Company's legitimate operational needs for Grievant's services as a Delivery Salesman during the undisputedly busy period associated with the Memorial Day holiday. 4/

4/ While more detailed evidence concerning the nature of the impact of Grievant's requests on the Company's operational needs would have been useful, the Arbitrator has had to rely on the limited but undisputed factual information available in Exhibits 2 and 3 to sort out other aspects of the facts underlying this case. Accordingly, the Arbitrator has also found it appropriate to consider such information as regards whether the Company acted arbitrarily or in bad faith in denying the floating holidays in question.

Accordingly, the Arbitrator concludes that the Company did not violate the Agreement by failing to grant Grievant either paid time off or pay in lieu of paid time off as regards the two unused floating holidays that he lost in connection with his voluntary termination of employment.

The past practice evidence presented by the parties does not persuasively support a different result. The Company's evidence relates to unused floating holiday benefits not received at termination. There is no basis in the record on which to reliably conclude that the

Union was aware of the Company's practice in that regard except in the cases of Alexander and the Grievant. Accordingly, there is no basis on which to bind the Union to an understanding that employes are not unconditionally entitled to be granted time off or pay for unused floating holidays at the time their employment with the Company terminates. The Union's evidence relates to a single instance in which an employe was paid cash in lieu of time off for a floating holiday in connection with his resignation. The record does not establish the precise factual circumstances that resulted in the Company's payments to Alexander as regards his 1995 floating holidays. Especially so given Alexander's payroll records that seemingly reflect that he was compensated for four floating holidays in 1995 when the contract then and now provided for only three. In any event, the single instance cited by the Union is not sufficiently longstanding and uniform a practice to bind the Company to unconditionally grant floating holidays off or pay in lieu thereof to employes who request that it do so in connection with the termination of their employment.

The published awards cited by the Union do not persuasively support a different result, either. In the MAHONING case it was Company's closing all of its stores -- and hence a matter over which the employes had no control -- that resulted in the employes' inability to schedule their personal holidays by mutual agreement with the employer as their contract provided, and the personal holiday language expressly provided for a cash payout of that benefit if it was not used by the second week of December. 91 LA at 1367. In contrast, the Grievant in the instant case controlled whether, when and with how much advance notice to the Company he would quit his employment, and the Agreement expressly provides payout upon termination only as regards vacation benefits and not as regards holidays. In STOWE-WOODWARD the arbitrator sustained a claim for holiday pay for fixed holidays that preceded a scheduled vacation that, in turn, preceded what the arbitrator found was the grievant's effective date of resignation. In contrast, the instant case involves a floating holiday unrelated to any vacation. Neither the result reached in that case nor the arbitrator's ruling that the company waived the contractual work requirement by granting and not revoking approval of grievant's vacation, persuasively supports the contentions advanced by the Union in this case.

A general review of published awards concerning holiday eligibility issues reveals that paid holidays are recognized as a bargained-for benefit rather than a gratuity. As such they are ordinarily not to be deemed forfeited if there is a reasonable alternative interpretation of the contract. Clearly stated contractual conditions on holiday eligibility must ordinarily be met before a holiday benefit is due. However, noncompliance with such conditions may be excused where employer bad faith prevents the employe from complying. See generally, Abrams, R. and Nolan, D., "Resolving Holiday Pay Disputes in Labor Arbitration," 33 Case Western Reserve Law Review 380 et seq. (1983), and published awards cited therein.

In this case, the Agreement clearly recognizes three floating holidays per employe per calendar year, which can be requested, approved and taken at any time during the calendar year. However, the Agreement also clearly requires the employe to obtain Company approval of the date on which a floating holiday is to be taken. Grievant did not meet that requirement as regards either of the two floating holidays at issue in this case. It is not a reasonable

alternative interpretation of the Agreement to unconditionally require the Company to payout any and all unused floating holidays in cash upon termination because the parties included no such provision in the Agreement whereas they included such provisions regarding vacation payout at termination and regarding holidays for employes returning from certain layoffs. Finally, the Company's denial of Grievant's requests to take the two floating holidays on dates requested by Grievant prior to the effective date of his resignation was a good faith response based on Company business needs and not a bad faith effort to prevent Grievant from enjoying the two remaining unused floating holidays.

Accordingly, the Arbitrator has denied the grievance in all respects.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the STIPULATED ISSUES noted above that

1. No. The Company did not violate the Agreement by failing to grant Chad Dietsche paid time off or pay for two floating holidays for calendar year 1999?

2. Accordingly, the subject grievance is denied, and no consideration of a remedy is necessary or appropriate.

Dated at Shorewood, Wisconsin this 2nd day of July, 1999.

Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator

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