

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

UAW INTERNATIONAL UNION, LOCAL 459

and

DIECAST OPERATIONS, TECUMSEH PRODUCTS COMPANY

Case 10
No. 57776
A-5781

Appearances:

Murphy, Gillick, Wicht & Prachthausen, by **Attorney George F. Graf**, appearing on behalf of the Union.

Foley & Lardner, by **Attorney Stanley S. Jaspan**, appearing on behalf of the Company.

ARBITRATION AWARD

UAW International Union, Local 459, herein the Union, and Diecast Operations, Tecumseh Products Company, herein the Company, requested the Wisconsin Employment Relations Commission to designate the undersigned as an arbitrator to hear and to decide a dispute between the parties. The undersigned was designated as the arbitrator. Hearing was held in Sheboygan, Wisconsin, on September 27, 1999. Post-hearing briefs were exchanged on October 25, 1999.

ISSUES

The parties stipulated to the following issues:

Did the Company violate the collective bargaining agreement by discharging Tim Boldt?

If so, what is the appropriate remedy?

BACKGROUND

The Company produces aluminum diecastings for small engines used in lawnmowers and snowblowers. The Union represents approximately 260 production and maintenance employees at the Company's facility in Sheboygan Falls.

Tim Boldt, the grievant, had been employed by the Company for approximately 6½ years. From May of 1998 until March 5, 1999, when he resigned, Boldt was President of Local 459.

On March 10, 1999, Boldt was assigned to operate a diecast machine on the first shift, which shift ran from 7:00 a.m. to 3:00 p.m. By about 1:20 p.m. Boldt had finished 880 pieces, which was the number of pieces expected for 8 hours of production assuming normal operations. He decided to take a break, so he went to the bathroom and then to the lunchroom. Boldt had shut down his machine and had put a torch in it, so it was ready for the next shift. He did not tell a supervisor that he was going on break. At approximately 1:30 p.m., Boldt was seen in the lunchroom by his supervisor, James Den Boer. Den Boer assumed Boldt was on his 15-minute afternoon break.

About 2:00 p.m. Den Boer heard a relief employe paging Boldt. Den Boer went back to the lunchroom where he saw Boldt reading a book. When Den Boer asked what he was doing, Boldt responded that he had made rate and had cleaned up his machine. Den Boer said that he had to run the machine to the end of the shift and that he should return to his machine. Boldt said he asked if he could check the contract and Den Boer did not object. Den Boer did not recall that Boldt said anything about the contract. Den Boer followed Boldt as he went to his locker and got a copy of the contract. Boldt, followed by Den Boer, then went to the office of the Human Resources Manager, Jack Schoemer. Schoemer was at a meeting and was not in his office. Boldt left the office. Shortly after that, Den Boer left the office and went to Boldt's machine, but Boldt was not there. Den Boer then left the machine. Boldt testified that when he went to his machine, the machine needed oil which he went to get and that Den Boer was at the machine when he returned. However, both Den Boer and Sharon Temme, a Union Steward, testified that when Den Boer returned to the machine a few minutes later, Boldt was there and was talking with Temme. The undersigned credits the testimony of Temme and Den Boer on this point. Den Boer told Boldt to start his machine. Boldt said he would not start the machine unless Den Boer signed a statement to the effect that Boldt would not be terminated for making another shot, i.e., part. Den Boer refused to either write or sign such a statement and told Boldt to start his machine. According to Den Boer, Boldt responded by saying "That's the problem with you god damn supervisors, you don't do a god damn thing around here." Boldt testified that he may have made such a statement. Den Boer again told Boldt to start his machine and that he could be fired if he did not. At this point, Temme advised Boldt that if he had a grievance he could file it later and he could be terminated if he did not start the machine. When Boldt did not start his machine, Den Boer left the area to find O'Keefe. Temme repeated her advice to Boldt. Boldt then began to run the machine.

Den Boer went to the Plant Superintendent, Dennis O'Keefe, and informed him of the situation. O'Keefe instructed Den Boer to suspend Boldt. When Den Boer returned to the area of Boldt's machine, he saw that Boldt had resumed running the machine. When that information was given to O'Keefe, he instructed Den Boer to tell Boldt to shut down his machine and to report to O'Keefe's office. After his first conversation with Den Boer, O'Keefe had been told by Ronald Kalk, the Production Control Manager, that, as he was walking down an aisle in the factory, he met Boldt who made loud and profane complaints about the supervisors. Boldt did report to O'Keefe's office. In response to O'Keefe's questions, Boldt admitted that he had left his machine early without permission. Boldt then complained about what he believed to be the Company's Union busting tactics. O'Keefe suspended Boldt pending further investigation. Boldt asked if he should put a torch in his machine so the machine would remain in operable condition and O'Keefe said he should. Boldt then left O'Keefe's office and, after putting the torch in the machine, he left the plant.

On March 12, while still on suspension, Boldt went to the plant to pick up his pay check. While at the plant, Boldt told O'Keefe that he wanted to see a Union representative. O'Keefe told Boldt that he would not be allowed to see a Union representative because he was on suspension and that he should leave the plant. Boldt repeated his request two more times and each time O'Keefe told him to leave the plant. O'Keefe had a clerical employe call the police. When told by O'Keefe that the police had been called, Boldt left the plant premises before the police arrived.

The Company terminated Boldt's employment effective March 19, 1999. Boldt grieved his discharge.

On January 26, 1999, the Company had issued a disciplinary notice to Boldt. The notice contained the following statements:

This notice (revised) is issued because of your continued improper actions which include abusive and unacceptable conduct demonstrated during Union-Management grievance / discussion meetings; your continued use of profanities and obscenities during such meetings; your continued shouting during such meetings; and at times your threats. These improper actions and unacceptable conduct have resulted in your being asked to leave such meetings and discussions with the result that the necessary business at hand was not concluded in a respectful and professional manner, for the good of all parties concerned and in the spirit of good labor-management relations.

To re-emphasize that stated in the original notice (January 18, 1999), it is to be clearly understood this is the **final notice** regarding this matter; and any further demonstration of such conduct on your part will result in your immediate termination.

POSITION OF THE UNION

The whole encounter between Den Boer and Boldt on March 10 was blown out of proportion. When Boldt left his machine on March 10, he had exceeded his daily production requirements and he felt he was entitled to shut down his machine. Also, he had a break coming and he had a sore arm. However, he was never allowed by either Den Boer or O'Keefe to offer those reasons. It was logical for Boldt to go to see Schoemer, since he wanted to find out about the precedent setting grievance to which Den Boer had referred. Boldt was neither belligerent nor insubordinate when told he had to return to his machine. He was preparing to start his machine, by getting the oil, when Den Boer arrived at the machine and began to harass him.

The minuscule use of profanity by Boldt should not be found to be sufficient to sustain a discharge. Kalk could not understand what Boldt said and did not think anyone else heard Boldt's comments. While the words used by Boldt may not be socially acceptable, those words are commonly used in the plant. Boldt's remarks were not a direct attack on any individual, but rather, were the comments of a frustrated employe. It appears the Company overreacted in the way it treated Boldt in its zeal to punish him for the militant stances he took as Union President and to make him an example. O'Keefe made no effort to investigate Den Boer's totally unfounded claim that Boldt was shouting and using profanity on March 10. Neither did O'Keefe give Boldt a chance to explain what had really taken place. Instead, he jumped the gun and suspended Boldt.

O'Keefe's actions on March 12 are also irresponsible. Boldt was not making a scene or disrupting Company operations. He simply made a reasonable request to see a Union official and to give the Union some information on his grievance.

Boldt should be reinstated and made whole for any losses suffered as a result of the Company's improper actions.

POSITION OF THE COMPANY

The Company had just cause to discharge Boldt. His conduct on March 10 was inexcusable. First, he walked off the job. While his shift was not scheduled to end until 3:00 p.m. and he was entitled to only one break in the afternoon, at 1:20 p.m. he shut down his machine, cleaned up, readied his machine for the next shift, and left his work area without making any effort to tell a supervisor. Then he went to the lunchroom and began reading a book. When Den Boer found him 40 minutes later, Boldt claimed that he had a right to stop working because he had made rate. The employes are not paid on an incentive basis. Boldt admitted that he had never heard of any employe leaving his work station upon making rate and that he had never done so previously.

When Den Boer directed him to return to work, Boldt instead insisted on going to Schoemer's office. Later he confronted Kalk with vulgarity.

When Boldt did return to his work station, he refused to start his machine until Den Boer provided him with a written statement. When Den Boer refused to provide the statement, Boldt responded with profanity. Even the intervention of a Union steward reminding Boldt that he could be discharged for insubordination did not immediately cause him to start his machine. Only after Den Boer left the area did Boldt start his machine.

Finally, on March 12, while he was still on suspension, Boldt again refused the repeated direct orders of O'Keefe to leave the building. Boldt acknowledged that he left the building only after he learned that the police had been called.

While Boldt's conduct on March 10 and 12 certainly constituted grounds for immediate discharge without regard to any prior discipline, the final notice, given to him in January of 1999, for improper conduct, demonstrates that his conduct was not isolated, but rather, was a continuation of conduct which he had been explicitly warned could lead to discharge.

The discharge should be sustained.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE III MANAGEMENT

Paragraph 5. The regular and customary functions of Management, such as . . . the right to hire, suspend, or discharge for just cause, . . . are vested exclusively in the Company subject to all other provisions of the Agreement.

. . .

DISCUSSION

The Union asserts that Boldt's belief he was entitled to leave his machine before the end of his shift after meeting the daily production requirement was not unfounded, as evidenced by Den Boer's reference to an earlier grievance dealing with such a situation. However, Boldt testified that he had never shut down his machine early and left the work area when he had exceeded the daily production requirements on prior occasions. He also admitted that he was not aware of such an action being done by any other employees. Boldt further testified that he had not been disciplined on prior occasions when he either exceeded, or failed to make, the

daily production requirements. If Den Boer did refer to an earlier grievance, it is clear that Boldt was not aware of such a grievance at the time he shut down his machine early on March 10. The undersigned concludes that Boldt did not have a reasonable basis for deciding to shut down his machine on March 10.

Boldt also played a delaying game with Den Boer. When told by Den Boer to leave the lunchroom and return to his machine, Boldt instead insisted on going to see Schoemer first. A more prudent approach would have been to return to his machine and go to see Schoemer after his shift ended. Upon learning that Schoemer was not in his office, Den Boer again directed Boldt to return to his machine. However, Boldt was not at his machine when Den Boer arrived at the machine. Although it is possible that Boldt had to go and get oil for the machine before he started it, in light of his other behavior, even that excuse for being away from the machine is suspect.

The Union asserts that Boldt complied at once when Den Boer, in the presence of Temme, directed him to start his machine. That assertion is in conflict with the testimony of Den Boer, Boldt and Temme. Initially Boldt refused to start his machine until Den Boer gave him a written statement. There is nothing in the evidence to show that such a written statement had ever been requested or given either to Boldt or any other employe in the past. Boldt admitted that he had never requested such a statement previously. When Den Boer refused to provide such a statement, Boldt made a loud and profane response. Both Boldt's request for the statement and his response to the refusal were totally inappropriate. Boldt then continued to fail to start his machine even after Den Boer again directed him to do so and said he could be fired if he didn't start the machine. At that point Temme also told Boldt he could be terminated if he failed to start the machine and, if he had a grievance, he could file it later. Boldt still did not start the machine. Den Boer then left the area to go see O'Keefe. After Temme again advised Boldt that he could be fired if he did not run the machine, he finally did start the machine.

The undersigned concludes that Boldt's failure to comply with a direct order from Den Boer gave the Company just cause to discharge him for his conduct on March 10, even if the incident involving Boldt and Kalk is not considered. Contrary to the Union's assertion, Kalk testified that he did understand what Boldt said, although he had no idea what Boldt was talking about. Boldt's outburst to Kalk was not acceptable behavior, even if Kalk was the only person who heard it.

The Union also contends that O'Keefe never gave Boldt a chance to explain what had taken place. Boldt testified that in response to O'Keefe's questions, he stated that he thought he was doing right and that he talked about the Company's Union busting tactics and also about his family. It is concluded that Boldt had an opportunity to give his explanation of what had occurred, but instead chose to give responses dealing with other topics. Thus, O'Keefe did not jump the gun and prematurely suspend Boldt. At no time on March 10 did Boldt attempt to tell

either Den Boer or O'Keefe about a sore arm. If he indeed had a sore arm, then he should have reported that condition to a supervisor before shutting down his machine. Boldt also admitted that he had never seen a physician about a sore arm. Thus, there are no medical records to support his assertion about his arm.

On March 12, Boldt's initial request of O'Keefe that he be allowed to see a Union representative was not unreasonable. However, when O'Keefe refused his request, Boldt should have left the plant premises as instructed by O'Keefe. His continued requests were inappropriate. While the Company had just cause to discharge Boldt based solely on his conduct on March 10, his behavior on March 12 did not provide the Company with any incentive to impose a less severe form of discipline.

The disciplinary notice Boldt had received in January of 1999 was based in part on his continued shouting and use of profane language. Such conduct, although in a different setting, i.e., labor-management meetings, was exhibited again on March 10. Boldt was not a long-term employe with an unblemished record, which factors would support a reduction of the discharge to a lesser form of discipline.

The record fails to support the Union's allegation that the Company's treatment of Boldt was taken either to punish him for the militant stands he took while he was the Union President, or, to bust the Union. As discussed above, Boldt's conduct provided the Company with just cause for his discharge, as would have been the case with any other employe.

Based on the foregoing, the undersigned enters the following

AWARD

That the Company had just cause to discharge Tim Boldt; that the discharge did not violate the collective bargaining agreement; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 24th day of November, 1999.

Douglas V. Knudson /s/

Douglas V. Knudson, Arbitrator