BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1521

and

EGGERS INDUSTRIES, INC.

Case 52
No. 57918
A-5791

Appearances:

Murphy, Gillick, Wicht & Prachthauser, by **Attorney Sandra Graf Radtke**, Brookfield Lakes Corporate Center, 300 North Corporate Drive, Suite 260, Brookfield, Wisconsin 53045, appearing on behalf of the Union.

Mr. Gary J. Milske, Personnel Manager, Eggers Industries, Inc., 164 North Lake Street, P.O. Box 1050, Neenah, Wisconsin 54957-1050, appearing on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereafter referred to as the Union and the Company, respectively, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was transcribed, was held on September 29, 1999, in Neenah, Wisconsin. The record was closed on November 2, 1999, upon receipt of the parties' post-hearing briefs.

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.

ISSUE

The Union frames the issue as follows:

> Was the Grievant discharged for just cause under the collective bargaining agreement and if not, what is the appropriate remedy?

The Company frames the issue as follows:

> Did the Grievant refuse a reasonable job request and resign rather than perform the work?
>
> If not, what is the appropriate remedy?

The undersigned adopts the following statement of the issue:

1. Did the Company discharge the Grievant, or did the Grievant quit her employment with the Company?

2. If the Company discharged the Grievant, did it do so with just cause?

3. If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE TWO – MANAGEMENT CLAUSE

2.1 The management of the plant and direction of the working forces, including the right to hire, suspend or discharge for just cause, to assign jobs, to promote and/or transfer employees within the plant, to increase and decrease the working force, to establish standards, to determine products to be handled, fabricated or manufactured, the schedules of production and the methods, processes and means of production or handling are vested exclusively in the Company.

. . .

2.5 When an employee covered by this agreement has their classification eliminated by management, thereby requiring the Company to change the employee's job, the shop steward shall be present at such meeting between the employee and the Company. An employee who has their non-temporary job classification eliminated will continue to receive their current rate of pay for a minimum of 60 days.

ARTICLE THREE – HOURS OF WORK

. . .

3.6 Any temporary transfers of employees from job to job by management will not result in any decrease in the regular straight time base rate of pay to the affected employees during this temporary assignment. Employees transferred will not be forced to work in a higher class job. If an employee volunteers to work a higher class job, said employee is subject to the overtime provisions in Article 4.9 for the higher class job.

. . .

ARTICLE TEN – SENIORITY

. . .

10.6 Loss of seniority: An employee shall lose his/her seniority for the following reasons:

a) If the employee leaves the service of the Company voluntarily.
b) If the employee in (sic) discharged for just cause. (Unjust discharges shall be considered under Article thirteen (13) of this agreement.)

. . .

ARTICLE ELEVEN – LEAVE OF ABSENCE

. . .

11.2 A request for absence from work for one (1) full day or less may be granted orally by the employee's Department Manager if the absence is within one (1) calendar week of the request.

. . .

ARTICLE THIRTEEN – GRIEVANCE PROCEDURE

13.1 A grievance within the meaning of the grievance procedure is any difference between the Company and an employee covered by this agreement as to any matter involving interpretation or application of any of the provisions of this agreement. Should any grievance arise, the employee or employees concerned shall continue to work as assigned by the Company, and the procedure hereafter set forth shall be followed in the settlement of grievances. All grievances shall be presented, in writing, within five (5) working days from the day either the employee(s) or the Union knew or reasonably could have known, that the cause of such grievance occurred. Once reduced to writing the grievant assigns to Local Union #2832 the authority for final agreement or disposition. Grievances not presented in writing within the time limits specified shall be deemed waived. An employee shall maintain the right to Union representation at any step of the grievance procedure. Grievances shall be handled as follows:

. . .

BACKGROUND

In April of 1999, the Company advised Union President David Riedel that there would be changes in veneer lay-up and that some veneer lay-up positions would be eliminated. Riedel was not told which positions or shifts would be affected by the changes.

In subsequent discussions, the Union indicated a preference for the elimination of third shift because of its understanding that the contract provides that the mill is to run on two shifts. The Union also requested the Company to put something in writing. In the month of July, the Union was advised that the second shift would be eliminated first and then the third shift.

The third shift employe in veneer lay-up was more senior than the second shift employe in veneer lay-up. The second shift employe in veneer lay-up, Michele Hoerning, hereafter the Grievant, commenced employment with the Company in 1992. During the Grievant's employment, her husband, Will Hoerning, has supervised the Grievant.

On June 7, 1999, at the Grievant's request, she met with the Company's Vice President-Operations, Harold Reichwald, and Will Hoerning. The Grievant requested this meeting because she thought that she was being mistreated by one of her supervisors. During this meeting, the Grievant told Reichwald that she thought this supervisor was not treating her with respect because she was a woman. Reichwald told the Grievant that he would talk to the supervisor about her complaint, but that he did not share the Grievant's view of the supervisor.

On June 8, 1999, when the Grievant reported to work, she was told that the Company was conducting an experiment and that she could not perform her veneer lay-up duties. The Grievant was assigned other duties.

On July 1, 1999, the Company Personnel Manager, Gary Milske, issued a letter to the Union that states as follows:

> RE: Elimination of Veneer Lay-up Position
>
> Gentlemen:
>
> Effective July 1, 1999, the company has decided to eliminate one veneer lay-up position. Since Michelle Hoerning is the least senior lay-up person and the company doesn't care which shift loses a position, Michelle's position is eliminated. If for any reason, this job is reinstated during the next 18 months, Michelle will be offered the position before it is posted.
>
> The Company will keep Michelle's wages at their current level for 60 days or until she bids on another job, if that occurs before 60 days. At the end of 60 days if she has not bid on another job, her rate of pay will be adjusted to a helpers rate.

The Union received this letter on or about July 1, 1999, and gave a copy to the Grievant.

Following the elimination of her veneer lay-up position, the Grievant continued to work on second shift, performing work as assigned by her supervisor. Pursuant to Article 2.5 of the collective bargaining agreement, the Grievant continued to receive the wage rate of her veneer lay-up position.

Shortly after the Grievant received a copy of the July 1, 1999 letter, the Company reinstated a second shift veneer lay-up position. The Union advised the Grievant that the Company first offered this position to a third shift employe. When the Company offered this position to the Grievant, she did not accept the position.

On July 27, 1999, Will Hoerning's supervisor, Jeff Look, gave Will Hoerning a small package of veneer lay-up orders and told Will Hoerning to have the Grievant perform the lay-up work that evening. The Grievant had performed this type of work in the past, when she held the veneer lay-up position.

At the beginning of second shift on July 27, 1999, Will Hoerning gave this veneer lay-up work assignment to the Grievant. Thereafter, the Grievant and Will Hoerning engaged in a discussion about the work assignment. Following this discussion, Will Hoerning told the Grievant that the Union needed to be involved.

At approximately 3:15 p.m. on July 27, 1999, the Grievant met with Union President Riedel and had a discussion about the veneer lay-up work assignment. Immediately following this discussion, Riedel and the Grievant went to the office of the Company Personnel Manager, Gary Milske.

Milske, the Grievant and Riedel discussed the veneer lay-up work assignment. Approximately twenty minutes into the meeting, Will Hoerning was asked to join the discussion. All four individuals remained in Milske's office for the duration of the meeting. The meeting ended at approximately 5:30 p.m.

The following morning, the Grievant received a telephone call from Union Business Representative Gregory Coenen. During this telephone conversation, Coenen told the Grievant that Milske had telephoned Coenen and told Coenen that the Grievant had quit her employment.

On the morning of July 28, 1999, after the Grievant had received this telephone call, Will Hoerning went in to the shop to speak with Harold Reichwald to explain what had happened and to ask that the Grievant be taken back to work. Reichwald brought Milske into this meeting and Milske told Reichwald and Will Hoerning that he (Milske) had accepted the Grievant's resignation.

On July 28, 1999, Milske prepared a letter notifying the Union that the Grievant had quit her employment and had a copy of this letter hand delivered to the Union. The Company has a practice of preparing such letters. Normally, however, the Union receives the letters about a week after the employe has quit.

On July 30, 1999, a grievance was filed on behalf of the Grievant. The grievance alleges that the Company had violated Article 2, 2.5 and 10.4(g) of the collective bargaining agreement and requests that the Grievant be made whole. On August 4, 1999, Milske issued the following response to the grievance:

RE: Michele Hoerning's Grievance

Gentlemen:

This letter is in response to the above referenced grievance. Michele Hoerning claims she took a sick day and did not quit. The company disagrees.

On July 27th, 1999, Michele Hoerning & Dave Riedel came to my office at 3:30 p.m., Michele explained that she would not lay-up veneer as requested by her supervisor because her job had been eliminated. I explained that since she was getting Class 2 pay the company could have her perform Class 2 work. She requested to waive the pay and I said I would discuss the issue with Harry Reichwald, Jeff Look and Rob Boudry the next day, but that night she would have to lay-up veneer and file a grievance if she thought the company was violating the contract. She continued to refuse to do the work. I explained that she would be terminated if she refused and at that point she said she was quitting.

Dave Riedel and I both tried to talk her out of quitting. She requested that Will join the meeting and asked Will what he thought she should do. He said, "it's your call." At this point she said she would take a sick day and I told her we all knew she wasn't sick and she never mentioned it again.

For over two hours I explained that if she thought the company was wrong, she should do the work requested and file a grievance. Only if she felt her safety was at stake should she refuse to do the work. She continued to refuse the work and say she would quit. At 5:00 I accepted her resignation and she said "Will, take me home."

The following day Will asked Harry Reichwald and myself if we would consider rehiring Micky. I stated that Michele had clearly quit, after being asked not to, and that I would not consider rehiring her.

I respectfully request that the Union withdraw the grievance.

Thereafter, the grievance was submitted to arbitration.

The Company's General Rules of Conduct include the following:

. . .

8. Employees are to accept all reasonable job assignments and shall obey the orders of their Department Manager or the Assistant Department Manager at all times.

1st Offense – Discharge

. . .

At the arbitration hearing, the Grievant submitted the following letter, dated September 28, 1999:

> Union President
> Eggers Industries
> 164 N. Lake Street
> Neenah, WI 54956
>
> RE: **Michele Hoerning**
>
> Mrs. Hoerning was referred to me by her neurologist, Dr. Janelle Cooper of LaSalle Clinic for psychological treatment. She was first seen on July 8th, 1999. She, unfortunately, has been diagnosed with multiple sclerosis, a serious neurological condition. This condition is often associated with serious mood disorders such as depression. She is therefore sensitive to stressful situations. She nevertheless is able to continue working 100% at her present job at the current time. She came to me on July 27, 1999 in extreme emotional distress after being informed that she was no longer in the employment of Eggers Industries, where she has worked for eight years. She was sufficiently stressed that hospitalization was considered, but her care was managed by her husband, and hospitalization was avoided. She is on medication to reduce her anxiety and stress. She and her husband Will informed me that her mental condition worsened and became quite serious during, and after, a lengthy discussion with the Eggers personnel manager. She has reported to me that she considered her treatment from the personnel manager to be "badgering." She continues to experience significant emotional distress, and it appears that her work situation makes a large contribution to her current clinical state.
>
> Sincerely,
>
> Daniel J. Neunaber, Ph.D
> Chairman, Psychology Department
> Licensed Psychologist

While this letter indicates that Dr. Neunaber saw the Grievant on July 27, 1999, the Grievant states that Dr. Neunaber saw her on July 28, 1999. Thus, Dr. Neunaber did not see the Grievant on the day of her conversation with Milske, but rather, saw her on the following day, after the Grievant had been notified that Milske considered the Grievant to have resigned her employment with the Company.

POSITIONS OF THE PARTIES

Company

Rule No. 8 of Company Exhibit No. 1, General Rules of Conduct, states that employes are to obey all reasonable job requests and that failure to do so results in immediate discharge. The Grievant confirms that she refused to perform the work because she did not have the job title.

The testimony establishes that, on several occasions, it was explained to the Grievant that, if she felt the Company was in error, the proper response would be to perform the work and file a grievance. The Grievant understood this explanation, but continued to refuse to perform the work.

The testimony establishes that the Grievant stated on several occasions that she had no alternative but to quit. At the close of the meeting, Company Personnel Manager Milske accepted the Grievant's decision to quit.

The Grievant's employment with the Company ended at 5:30 p.m. on July 27th when her resignation was accepted and she told her husband to take her home. Had Milske not accepted her resignation, the Grievant would have been terminated at that point for having refused to accept a reasonable work request.

If the Grievant became too upset to work, she brought it upon herself by refusing to perform the work requested. She was not upset or sick when she first came into the Personnel Manager's office, and, did not become so upset that she could not perform a job that she had performed for several years. To allow an employe to claim that he/she is too upset to work whenever they have a disagreement with management would totally undermine Rule No. 8.

The Grievant's employment with the Company ended when she left Milske's office. Thus, the personal day granted the Grievant by her husband was not valid.

The Grievant never informed the Company of her illness prior to hearing. The physician's statement indicates that she could perform 100 percent of her duties. Therefore, she could have performed the work requested and file a grievance as the Company asked her to do. Had the Grievant's husband truly believed that the Company could not require the Grievant to perform the work, then her husband would have assigned the work to another employe and the Personnel Manager would not have become involved.

The Grievant repeatedly refused to perform a reasonable work request, was informed of the consequence of her refusal, stated on several occasions that she had no alternative but to quit, and finally had her resignation accepted.

Union

The Company's assertion that the Grievant quit is absurd and against the weight of the evidence. The Grievant was excused by her supervisor and documented as being on a personal day. The supervisor's testimony that he has authority to grant a personal day is not refuted by the Company. The Company clearly violated policy, as well as State and Federal law, in denying a personal day.

The Company created this situation and has to take some responsibility for the reaction it invoked. The Grievant, as stubborn as she was in the meeting, did not say or do anything consistent with an employe actually quitting a job. It was a debate, not the Company saying if you do this, then there will be a consequence. The Personnel Director testified that it was like beating a dead horse.

When the Personnel Director left the room, only he left with the understanding that the Grievant had quit, and that is not sufficient. The Grievant did not believe she had quit and had not intended to quit. Mr. Riedel testified that he did not believe her to have quit. The supervisor did not take it to be a quit, or he would not have marked her down as taking a personal day.

Several times during the meeting with the Personnel Director, the Grievant expressed that she was not feeling well. The Personnel Director immediately and curtly took it upon himself to deny sick leave. The Grievant is an adult and knows when she is not feeling well. It may have been warranted for the Personnel Director to demand a medical slip if he doubted whether or not she was ill, but he should not have outright denied the request.

As it turns out, the Grievant actually was ill. She has a very serious chronic health condition. The doctor's note in evidence tells us this and also substantiates that she was not feeling well on the day in question.

Under both the Federal and State Family Medical Leave Acts, it is very clear that the employe does not have to utter magic words to invoke those statutes. The employe does not have to say "I want family medical leave." The employe need only state that leave is needed. It is sufficient that the employe gives the employer sufficient information that a reasonable employer would conclude there might be a need for family medical leave. The appropriate action would have been for the Personnel Director to grant the leave and demand that the Grievant verify a serious health condition within two to three days, as the statute dictates. Had the sick day been properly granted, the Grievant would not be in the position she is in today.

Consistent with arbitral precedent, the Arbitrator must look at the totality of the circumstances and the specific facts. The specific facts and the totality of the circumstances warrants putting the Grievant back to work and making her whole.

The Grievant does not have a history of refusing valid work assignments or receiving discipline. The Grievant was not trying to cause trouble or be insubordinate. She was upset because of many preceding factors: losing her job; being assigned to work under a man she perceived as a sex discriminator; being denied first dibs on her old job; and being asked to perform work that she believed violated the collective bargaining agreement, a belief that was supported both by her supervisor and the Union President. The Company's treatment understandably made the Grievant angry and then the Company had the gall to ask her to perform the very work that was taken from her in the first place.

Additionally, the Grievant became emotional and stubborn, traits brought upon by her medical condition. The Company's approach to the matter, i.e., a pointless and emotional two-hour debate, compounded the situation in that it made emotions soar higher. The Grievant became physically ill and probably was not exercising her best judgment, which is understandable, given her medical condition. The Company should have just told the Grievant what her options were.

Even in her emotional state, she did not just storm out the door. She went to her supervisor and asked for an excused absence.

While the Grievant's reaction to the Company's work assignment may not have been the wisest, mitigating circumstances warrant giving the Grievant a second chance. Whether or not the Company knew of the Grievant's medical condition, the Grievant suffers from the medical condition and was affected by the Company's actions.

The Grievant should be reinstated and made whole for her losses. Even if one concludes that the Grievant should have some consequence for her actions, the result here is too harsh. Mitigating factors lead to the conclusion that the Grievant should not have the most severe of all penalties, the loss of her job. The Arbitrator should rule that the Grievant was not terminated for just cause and award the Grievant an appropriate remedy under the facts and circumstances of this case.

DISCUSSION

Testimony Concerning Events of July 27, 1999

Grievant

On July 27, 1999, when the Grievant was given a veneer lay-up assignment by her supervisor, Will Hoerning, she told her supervisor that she did not want to do the assignment. Will Hoerning told the Grievant that she did not have to do the assignment. The Grievant then told Will Hoerning that she would get the Union President and go to the Personnel Office. The Grievant met with the Union President, Dave Riedel, and then they both went to the office

of Personnel Manager Gary Milske. The meeting with Milske began at 3:25 or 3:30 p.m. The Grievant gave Milske the stack of veneer lay-up tickets and told Milske that she did not think that she had to do the veneer lay-up assignment. The Grievant told Milske that her job had been eliminated; that she no longer had the job title; and that, according to the contract, she did not have to do a higher-paying job because in her eyes she was a helper. Milske responded by telling the Grievant to go out and do the work. Riedel told Milske that the Grievant should not have to do the assignment because her job had been taken away. The Grievant repeatedly asked Milske why she should have to do the veneer lay-up assignment when her job had been eliminated. Milske repeatedly told the Grievant to perform the work and file a grievance. Milske told the Grievant that the Company was holding her rate of pay for sixty days and that the Company policy was to ask employes to perform work at that rate. At some point during the meeting, the Grievant asked for a sick day. At the time of this request, the Grievant was crying, felt very upset and felt that she was being badgered. Milske denied the Grievant's sick leave request. Riedel asked that the Grievant be given a personal day. Two or three times during the conversation, the Grievant told Milske that he was giving her no alternative but to quit, but that the Grievant never told Milske that she quit. The conversation between Milske and the Grievant went back and forth like an argument and the Grievant became more upset. The Grievant became sick to her stomach; concluded that she was not going to be able to do the job; looked at Will Hoerning; told Will to take her home; and left Milske's office.

The Grievant went back to the shop floor for her belongings and asked Will Hoerning if she could take a personal day because she was so upset. Will Hoerning told her he would put her down for a personal day. The Grievant and Will Hoerning left the Company's premises.

When the Grievant arrived at home, she was very upset, stressed out, and emotionally disturbed. Will Hoerning tried to settle the Grievant down and telephoned the doctor.

On July 28, 1999, the Grievant saw Dr. Neunaber. The Grievant understood that Dr. Neunaber wanted to hospitalize her.

Will Hoerning

At the start of second shift on July 27, 1999, Will Hoerning gave veneer lay-up tickets to the Grievant. This veneer lay-up work was the type of work that the Grievant had performed when she held the second shift Veneer Lay-up position. The Grievant asked why he was giving her the tickets, that she no longer had that job title, that she was a helper and that she did not have to do the veneer lay-up work. Will Hoerning responded that she was right and that she did not have to do the work. When the Grievant continued to question why she was being given the veneer lay-up work, Will Hoerning explained that he had been given instructions to have her perform the work. When the Grievant continued questioning Will Hoerning about the work assignment and said that she did not have do the work assignment,

Will Hoerning told the Grievant that the Union needed to get involved. After discussion, Union President Riedel indicated that he needed to go to the Personnel Manager with the subject.

Approximately fifteen or twenty minutes after the Grievant and Riedel began their meeting with Personnel Manager Milske, Will Hoerning came into the meeting room. At that point in time, Milske told the Grievant to do the job and file a grievance. The Grievant responded by stating that Milske was making her do a job that had been taken away from her; that according to the contract she was a helper; and that Milske was forcing her to do something that she should not be doing. During the ensuing discussion, Milske told the Grievant that she was entitled to her opinion, but that the proper way to resolve the issue was to do the work and file a grievance. The Grievant responded that she felt that she did not have to do the job. On a couple of occasions, the Grievant told Milske that he was giving her no option or alternative but to quit because he was forcing her to do something that violated the contract. Milske told the Grievant not to quit, that she was overreacting, that she should not quit, but rather, she should do the job. At some point in the conversation, the Grievant asked for a sick day because she was feeling sick and Milske said no, that he did not believe that she was sick. Following this denial, Milske and the Grievant had further discussion. During this discussion, Milske told the Grievant to go out and perform the job and the Grievant responded that Milske was forcing her or giving her no option but to quit because of what Milske was trying to make the Grievant do. At some point in the discussion, Union President Riedel asked if the Grievant could have a personal day because the Grievant was distraught. Milske responded that he could not do that. At some point in the discussion, the Grievant asked Will Hoerning what she should do and he responded that it was her decision to make. At the end of the meeting, the Grievant told Will Hoerning to take her home, that she was not feeling well. Will Hoerning and the Grievant then left the room.

After leaving the meeting room, the Grievant went into the mill and Will Hoerning asked her how things were going. The Grievant asked Will Hoerning for a sick day or a personal day because she was not feeling well and would not have been able to perform the job. Will Hoerning concluded that the Grievant was very upset, distressed emotionally, and that, in her condition, the Grievant did not have the concentration necessary to perform the veneer lay-up job correctly. Will Hoerning granted the Grievant a personal day for the purpose of providing the Grievant with an opportunity to relax, think things over, and to consult further with Will Hoerning.

Will Hoerning drove home with the Grievant. The Grievant was still upset. Someone telephoned the Grievant's regular doctor. The Grievant's regular doctor could not see the Grievant, but referred the Grievant to another doctor. Will Hoerning then went to the quarterly manager's meeting at the Timber Rattler game. At the game, Will Hoerning told Jeff Look that the veneer was not going to be laid up that evening.

On the morning of July 28, 1999, the Grievant received a telephone call from Union Business Representative Coenen in which Coenen stated that the Company had informed him that the Grievant had quit her employment and that the Company had accepted her resignation.

On the morning of July 28, 1999, following the Grievant's receipt of this telephone call, Will Hoerning went into the plant to give Reichwald an explanation of the events of July 27, 1999, and to ask Reichwald if he would consider taking the Grievant back to work. During this conversation with Reichwald, Will Hoerning stated that he believed that he probably was a problem because he had told the Grievant that she did not have to do the job. Will Hoerning also stated that, if there had been a cool-down period for the Grievant to discuss the matter with Will Hoerning or Riedel, things might have been different, but in the Grievant's state of mind at that time, it would not have happened.

When the doctor saw the Grievant, the doctor indicated that he wanted to admit the Grievant into the hospital for observation because of her state. When the Grievant and Will Hoerning returned home, Will Hoerning was able to calm the Grievant down and the Grievant was not admitted into the hospital.

David Riedel

At approximately 3:15 p.m. on July 27, 1999, the Grievant confronted Union President Riedel and explained that the Company wanted her to lay up veneer that night. The Grievant appeared to be very emotional and Riedel told the Grievant to settle down. Riedel set up a meeting with Milske.

Riedel went into the meeting with the purpose of asking the Company to grant the Grievant a special waiver of the sixty days to allow the Grievant to immediately be signed down as a helper so that the Grievant would not be obligated to do the lay-up job that night. Milske responded by saying that the Company would not allow this. Riedel stated that there were two other individuals qualified in veneer lay-up and Milske strongly stressed that the Company wanted the Grievant to do the job. Riedel did not consider the Company's request to be reasonable. During the meeting, things got emotional and tense. During the meeting, Riedel asked Milske to allow the Grievant to take either a personal day or a sick day and Milske denied these requests. On three different occasions, the Grievant told Milske that he gave her no other alternative but to quit. Approximately three different times, Milske told the Grievant that she should do the work and file a grievance. During the meeting, Milske asked Riedel to have the Grievant do the job and file a grievance. Riedel responded to the effect that it would be redundant to file a grievance after the fact, being that there were two qualified people that could have done the job. At the conclusion of the meeting, the Grievant, who had tears in her eyes and was crying, asked Will to take her home.

In early August, Riedel presented the Grievant's grievance to the Local Union Executive Board. Riedel attempted to explain what had occurred on July 27, 1999, and expressed his feeling that the Company had coerced and forced the Grievant to quit.

Gary Milske

At approximately 3:30 p.m., the Grievant and Riedel entered Milske's office. The Grievant told Milske that Will Hoerning had asked her to lay up veneer that night and that she did not feel that she should be required to do that work because her job had been eliminated. Milske responded that it was the Company's position that she was being held at her Veneer Lay-up rate of pay for sixty days and, during that time period, the Company could ask her to do the work because the Company had done this in the past. The Grievant responded that the Company had eliminated her job and she did not have to do the work. Milske responded that he understood her point of view; that he and she had a difference of opinion; and that he believed that the Company could ask her to do the work. Milske asked the Grievant if the job was illegal or dangerous and the Grievant responded no. Milske explained that if the job was not illegal or dangerous, then the Grievant could not refuse to perform the work; that the Grievant could perform the work under protest and file a grievance; and that the grievance would be resolved at a later date and nobody's job would be in jeopardy. The Grievant continued to refuse to do the work and to indicate that she would quit if Milske insisted that the Grievant do the work. Will Hoerning was asked to join the meeting. When Will Hoerning joined the meeting, he was told that the Grievant was refusing to do the job and that Milske was trying to get the Grievant to do the work and file a grievance. The Grievant then asked Will Hoerning what she should do and Will Hoerning told the Grievant that it was her choice. Milske spent probably an hour telling the Grievant that she should not quit, that she was making a mountain out of a molehill, that the Grievant should do the job and file a grievance. The Grievant said that Milske was not giving her any choice but to quit. The Grievant then indicated that she was upset and could not perform the work. Milske, believing that this claim was a ploy to get out of work, disagreed with that. During the meeting, the Grievant was asked on at least ten occasions to do the work, file a grievance and not to quit. Several times during the discussion Milske told the Grievant that they were just repeating themselves. On several occasions, Milske informed the Grievant that, under the disciplinary procedure, the first step for refusing to do a job is termination. During the meeting, the Grievant said that the Company's request was not reasonable and violative of the collective bargaining agreement. Riedel told Milske that he thought the company was violating the collective bargaining agreement. Milske told the Grievant that if the Grievant continued to refuse to do the work, his only choice would be to terminate her and the Grievant responded that then she was going to quit. As 5:30 p.m. approached, Milske said that we have to wrap this up. Milske indicated that he would accept the Grievant's resignation; the Grievant said "Will, take me home" and the Grievant left Milske's office.

Arbitrator's Discussion With Respect to the Events of July 27, 1999

All of the four participants to the meeting of July 27, 1999, testified at hearing. While there is variation in their testimony, there is general agreement on the majority of material facts. Upon consideration of this testimony, the undersigned concludes the following:

The Grievant's immediate supervisor, Will Hoerning, assigned veneer lay-up work to the Grievant on July 27, 1999. When the Grievant objected to this assignment, the Grievant's immediate supervisor told her that she did not have to do the veneer lay-up work. The Grievant did not accept this decision of her immediate supervisor. Rather, the Grievant brought the issue of veneer lay-up work assignment to the Union President. The Union President and the Grievant then brought the issue of the veneer lay-up work assignment to the Company's Personnel Manager.

During the ensuing meeting with the Company Personnel Manager, the Company Personnel Manager told the Grievant to do the veneer lay-up work. On multiple occasions, the Grievant explained why she felt that she should not be given the veneer lay-up work assignment. The Company Personnel Manager told the Grievant that she was entitled to her point of view, but that the Company did not share her point of view and explained why the Company believed that it was entitled to assign the veneer lay-up work to the Grievant.

On multiple occasions, the Company Personnel Manager told the Grievant that the appropriate way to proceed was to do the work and file a grievance. The Grievant did not agree to perform the work and file a grievance. Rather, the Grievant continued to argue that the Company should not require her to do the work. On multiple occasions, the Company Personnel Manager responded to this argument of the Grievant by reiterating that the Grievant should do the work and file a grievance.

On multiple occasions, the Grievant told the Company Personnel Manager that his insistence that she perform the work would provide the Grievant with no alternative but to quit. The Company Personnel Manager advised the Grievant that she was overreacting, that the Grievant should not quit, but rather, that the Grievant should do the work. When the Company Personnel Manager advised the Grievant that they would have to wrap up the meeting, the Grievant told her husband to take her home and left the meeting. 1/

1/ Of the four witnesses to the meeting of July 27, 1999, Gary Milske is the only witness to claim that the Grievant specifically stated that she quit, or to claim that, at the end of the meeting, Milske specifically stated that he accepted the Grievant's resignation. Given this fact, the undersigned has not found Milske's testimony on these two points to be persuasive.

Of the four witnesses to the meeting of July 27, 1999, Will Hoerning is the only one to claim that the Grievant's statement to take her home was accompanied by the Grievant's statement that she was not feeling well. Given this fact, the undersigned has not found Will Hoerning's testimony on this point to be persuasive.

Prior to the end of the July 27, 1999 meeting, the Grievant clearly indicated that, if the Company required the Grievant to perform the veneer lay-up work, then the Grievant would quit her employment rather than perform the work. Although the Grievant attempted to persuade Milske to not require her to perform the veneer lay-up work, Milske was not persuaded. Rather, throughout the meeting, Milske clearly maintained the position that the Company wanted the Grievant to perform the work.

When Milske indicated that the meeting had to end, the Grievant did not tell Milske that she would perform the veneer lay-up work assignment. Rather, she told her husband to take her home and then left the meeting. By this conduct, the Grievant confirmed her earlier statement, i.e., that she would quit rather than perform the veneer lay-up assignment. Contrary to the argument of the Union, this conduct of the Grievant during the meeting of July 27, 1999, provided Milske with a reasonable basis to conclude that the Grievant had resigned her employment.

Denial of Personal Day

The Union argues that Milske violated State and Federal law, in denying the Grievant a personal day. Inasmuch as the Union does not identify the State and Federal law alleged to have been violated, the undersigned does not find this argument to be persuasive.

The Union also argues that the Company violated policy when it denied the Grievant a personal day. Article 11.2 of the parties' collective bargaining agreement, relied upon by the Union, states that an employe's Department Manager may grant an employe's request for an absence from work for one (1) full day or less.

Under the language of Article 11.2, the decision to grant or deny an employe's request for a personal day is solely within the discretion of management. Milske confirms that, as Personnel Manager, he has authority to discipline and to grant sick days and personal days.

Milske also confirms that supervisors, such as Will Hoerning, have discretion to grant one personal day and that Milske generally does not interfere with this exercise of supervisory discretion. The record does not demonstrate the Company has any other policy or procedure with respect to requests for personal days.

According to Will Hoerning, Union President Riedel asked Milske for a personal day because the Grievant was distraught, a very nervous upset individual. (T at 72) While Riedel's testimony on this point is not entirely clear, it appears that he asked for a personal day because "things got very emotional, feelings were getting very tense." (T at 54)

It is not evident that the Company has a practice of granting the personal day requests of employes that become emotional or upset at work. Indeed, the one instance in which the record demonstrates that an employe was granted a personal day "on a moment's notice" involved a death in the family.

Notwithstanding the Union's argument to the contrary, it is not evident that Milske violated any policy by refusing to grant the Grievant a personal day when requested to do so during the meeting of July 27, 1999. Nor is it evident that this refusal was an abuse of management discretion.

As a general rule, Will Hoerning's supervisory position would provide him with authority to grant the Grievant a personal day. However, during the meeting of July 27, 1999, the Personnel Manager specifically denied a request to provide the Grievant with a personal leave day. The Grievant and Will Hoerning acknowledge that they were present when the Personnel Manager denied the request to provide the Grievant with a personal leave day.

It was not reasonable for either Will Hoerning, or the Grievant, to conclude that Will Hoerning had authority to override the Personnel Manager's decision to deny the request to grant the Grievant a personal day. Nor would it be reasonable for the undersigned to conclude that Will Hoerning had such authority.

Moreover, as the Company argues, the Grievant's resignation was effectuated at the time she left Milske's office. Thus, as the Company also argues, Will Hoerning's decision to grant the Grievant a personal day was not timely.

Denial of Sick Day

Riedel's testimony does not contain any claim that, during the meeting of July 27, 1999, the Grievant stated that she was not feeling well, or that the Grievant made any other statement describing her emotional or physical state. Indeed, Riedel recalls that he, and not the Grievant, requested a sick leave day or a personal day. Riedel apparently made this request because "things got emotional and tense." (T at 54)

The Grievant recalls that, after she and Milske went back and forth, she asked for a sick day and that Milske denied it. The Grievant does not claim that her request for a sick day was accompanied by a statement that she was feeling sick, or by any other explanation of why she was requesting a sick day. The Grievant claims that, at the time of the request she crying, felt very upset and felt that she was being badgered. The Grievant further claims that, as she and Milske went back and forth, she became more and more upset and became sick to her stomach. The Grievant, however, does not claim that, during the meeting of July 27, 1999, the Grievant told Milske that she was feeling sick to her stomach, or that the Grievant provided any other information on her physical or emotional state.

Milske recalls that the Grievant appeared perfectly fine for the first hour of the meeting and then indicated that she was upset and could not perform the work. Milske, who told the Grievant that he did not agree that she was too upset to perform the work, concluded that these comments of the Grievant were a ploy to get out of performing the work. Milske's direct testimony does not contain any claim that, during the meeting of July 27, 1999, the Grievant stated that she was not feeling well, or that the Grievant made any other statement describing her emotional or physical status. On cross examination, Milske agreed that the Grievant said that she did not feel well.

Will Hoerning, who came into the meeting approximately fifteen to twenty minutes after it had started, recalls that, after Milske and the Grievant exchanged views on their respective positions, the Grievant requested to take a sick day because she was feeling sick. Hoerning further recalls that Milske denied the request and stated that he (Milske) felt that the Grievant was not sick. Hoerning recalls that, following this denial, Milske and the Grievant continued to exchange views and that, at the end of the meeting, the Grievant told Hoerning "take me home, I am not feeling well" and then left the meeting. (T at 73)

All four of the witnesses to the meeting of July 27, 1999, recall that, at the end of the meeting on July 27, 1999, the Grievant told Will Hoerning to take her home. Will Hoerning is the only witness to recall that a statement that she was not feeling well accompanied this statement of the Grievant. Inasmuch as this testimony of Will Hoerning is inconsistent with all three of the other witnesses, it is not persuasive.

Contrary to the argument of the Union, the record does not demonstrate that, at several times during the meeting, the Grievant expressed that she was not feeling well. Rather, the record demonstrates that the Grievant made such a statement on one occasion, i.e., at the time that she requested a sick day.

The undersigned is persuaded that the Grievant pronounced that she was sick only after it became clear that Milske was not going to accept the Grievant's position, or otherwise excuse the Grievant from performing the veneer lay-up assignment. The timing of the Grievant's sick leave request supports Milske's conclusion that the Grievant was not sick at the time he denied her sick leave request.

The testimony of Will Hoerning confirms statements made in Milske's letter of August 4, 1999, i.e., that when Milske denied the Grievant's sick leave request, he stated that he did not believe that she was sick. It is not evident that the Grievant took issue with this statement. Nor is it evident that the Grievant attempted to explain the nature of her illness, other than to state that she was too upset to work. Following the denial of her sick leave request, the Grievant remained in the room and continued to argue that the Company should not assign her the veneer lay-up work. This conduct of the Grievant supports Milske's conclusion that the Grievant was not sick at the time that he denied her sick leave request.

Will Hoerning, Riedel, or Milske, do not claim that, during the meeting of July 27, 1999, the Grievant appeared to be sick. Milske recalls that the Grievant appeared "stubborn" because her jaw was clenched. Riedel recalls that, at the time that the Grievant left the meeting, she was crying. Will Hoerning does not provide any testimony concerning the Grievant's physical appearance during the meeting with Milske. 2/ Nor does the Grievant describe her physical appearance during the meeting, other than to state that she was crying.

2/ Will Hoerning states "Dave Riedel also requested that Gary possibly think about giving her a personal day because she was distraught, a very nervous upset individual, and that was denied." (T at 72) This testimony is not a model of clarity. The most reasonable construction of this testimony is that Hoerning is not reporting his observations of the Grievant's physical state, but rather, is relating Riedel's statements to Milske. Will Hoerning's comments concerning the Grievant's physical appearance at times other than in the meeting with Milske are not relevant to the determination of whether or not Milske had a reasonable basis to conclude that the Grievant was not sick at the time that he denied her request for sick leave.

The evidence of the Grievant's physical appearance is consistent with an individual who has vigorously argued that the veneer lay-up work should not be assigned; has had this argument repeatedly rejected; and has indicated that she would rather quit than perform the assigned veneer lay-up work. Indeed, the Grievant acknowledges that she was upset and crying because she felt like the Company was badgering her into performing work that she did not feel that she was required to perform. (T at 31) The evidence of the Grievant's physical appearance at the time she requested sick leave does not demonstrate that it was unreasonable for Milske to conclude that the Grievant was not sick. Rather, such evidence is consistent with Milske's conclusion that the Grievant was just being "stubborn."

Contrary to the argument of the Union, the record does not demonstrate that Milske unreasonably denied the Grievant's request for sick leave. Rather, the record demonstrates that Milske had a reasonable basis to conclude, as he did conclude, that the Grievant's request for sick leave was a ploy to avoid performing the veneer lay-up work assignment.

A Personnel Manager's opinion, per se, is not generally sufficient to deny an employe's sick leave request. In the present case, however, the Personnel Manager did not form this opinion in a vacuum, but rather, had the opportunity to interact with and observe the Grievant for a substantial period of time. The Grievant's conduct, as well as the circumstances surrounding the Grievant's request for a sick day, provided Milske with a reasonable basis to conclude that the Grievant was not sick.

Work Rule 8 would have little meaning if an employe could avoid having to perform assigned work by claiming to be sick. Under the circumstances of this case, the Grievant had the burden of refuting the Personnel Manager's conclusion that she was not sick.

Had the Grievant wished to have Milske give consideration to her medical condition of MS when she requested sick leave, then the Grievant could have provided timely notification of this medical condition to Milske. The Grievant did not notify Milske of this condition until September 29, 1999, the date of the arbitration hearing. Such notification is not timely. Accordingly, the Union may not rely upon the Grievant's medical condition of MS to argue that Milske acted unreasonably when he refused the Grievant's request for sick leave.

The grievance filed on behalf of the Grievant does not claim that the Company has violated the State Family Medical Leave Act. Nor is it evident that, prior to hearing, the Union made any claim that the Company has violated the State Family Medical Leave Act. Accordingly, the undersigned does not consider this issue to be appropriately before the arbitrator.

Totality of the Facts and Circumstances

The Union argues that the totality of the facts and circumstances support reinstatement. The undersigned disagrees.

Notwithstanding the belief of the Union President to the contrary, the Company did not force the Grievant to quit. Rather, the Company's Personnel Manager advised the Grievant to not quit, to perform the work and to file a grievance. Not only is the Personnel Manager's advice consistent with well-established labor law principles, it is also consistent with the language of Article 13.1 that states as follows:

> A grievance within the meaning of the grievance procedure is any difference between the Company and an employee covered by this agreement as to any matter involving interpretation or application of any of the provisions of this agreement. Should any grievance arise, the employee or employees concerned shall continue to work as assigned by the Company, and the procedure hereafter set forth shall be followed in the settlement of grievances. . . .

In the present case, the Grievant and the Company had a "difference" as to the applicability of Article 3.6. The Grievant believed that the Company could not require her to perform veneer lay-up work because she was a helper and, thus, in a lower class job. The Company believed that it could require the Grievant to perform the veneer lay-up work because she was receiving the veneer lay-up wage rate and such an assignment was consistent with past practice. As the Personnel Manager correctly concluded, the "difference" between the Company and the Grievant is a grievance within the meaning of the parties' collective bargaining agreement.

The "work now, grieve later" rule was best explained by Arbitrator Harry Schulman in FORD MOTOR CO., 3 LA 779, (1944). He there stated:

> The employee himself must also normally obey the order even though he thinks it improper. His remedy is prescribed in the grievance procedure. He may not take it on himself to disobey. To be sure, one can conceive of improper orders which need not be obeyed. An employee is not expected to obey an order to do that which would be criminal or otherwise unlawful. He may refuse to obey an improper order which involves an unusual health hazard or other serious sacrifice. But in the absence of such justifying factors, he may not refuse to obey merely because the order violates some right of his under the contract. The remedy under the contract for violation of right lies in the grievance procedure and only in the grievance procedure. To refuse obedience because of a claimed contract violation would be to substitute individual action for collective bargaining and to replace the grievance procedure with extra-contractual methods. And such must be the advice of the committeeman if he gives advice to employees. His advice must be that the safe and proper method is to obey supervision's instructions and to seek correction and redress through the grievance procedure.
>
> *Purpose of Grievance Procedure*
>
> Some men apparently think that when a violation of contract seems clear, the employee may refuse to obey and thus resort to self-help rather than the grievance procedure. That is an erroneous point of view. In the first place, what appears to one party to be a clear violation may not seem so at all to the other party. Neither party can be the final judge as to whether the contract has been violated. The determination of that issue rests in collective negotiation through the grievance procedure. But, in the second place, and more important, the grievance procedure is prescribed in the contract precisely because the parties anticipated that there would be claims of violations which would require adjustment. That procedure is prescribed for all grievances, not merely for

doubtful ones. Nothing in the contract even suggests the idea that only doubtful violations need be processed through the grievance procedure and that clear violations can be resisted through individual self-help. The only difference between a "clear" violation and a "doubtful" one is that the former makes a clear grievance and the latter a doubtful one. But both must be handled in the regular prescribed manner.

Universality of Problems

Need for Adjustments

Some men apparently think also that the problems here involved are evils incident to private profit enterprise. That, too, is a totally mistaken view, as a moment's reflection will show. The problems of adjustment with which we are concerned under the contract are problems which arise and require adjustment in the management of an enterprise under any form of economic or social organization. Any enterprise -- whether it be a privately owned plant, a governmentally operated unit, a consumer's cooperative, a social club, or a trade union -- any enterprise in a capitalist or a socialist economy requires persons with authority and responsibility to keep the enterprise running. In any such enterprise there is need for equality of treatment, regularity of procedure, and adjustment of conflicting claims of individuals. In any industrial plant, whatever may be the form of political or economic organization in which it exists, problems are bound to arise as to the method of making promotions, the assignment of tasks to individuals, the choice of shifts, the maintenance of discipline, the rates of production and remuneration, and the various other matters which are handled through the grievance procedure.

Incidents of Human Organization

These are not incidents peculiar to private enterprise. They are incidents of human organization in any form of society. On a lesser scale, similar problems exist in every family: Who shall do the dishes, who shall mow the lawn, where to go on a Sunday, what movie to see, what is a reasonable spending allowance for husband or daughter, how much to pay for a new hat, and so on. The operation of the union itself presents problems requiring adjustment quite similar to those involved in the operation of the company -- problems not only in the relations of the union to its own employees but also in the relations between the members of the union. Anyone familiar with seniority problems knows that the conflict of desires within the union is quite comparable to that between the union and the company. And any active member of Local 600 knows that the frictions and conflicts within a large union may be as numerous and difficult as those between

> the union and the company. Such "disputes" are not necessarily evils. They are the normal characteristics of human society which both arise from, and create the occasion for, the exercise of human intelligence. And the grievance procedure is the orderly, effective and democratic way of adjusting such disputes within the framework of the collective labor agreement. It is the substitute of civilized collective bargaining for jungle warfare.
>
> *Need of Authority in Industry*
>
> But an industrial plant is not a debating society. Its object is production. When a controversy arises, production cannot wait for exhaustion of the grievance procedure. While that procedure is being pursued, production must go on. And some one must have the authority to direct the manner in which it is to go on until the controversy is settled. That authority is vested in supervision. It must be vested there because the responsibility for production is also vested there; and responsibility must be accompanied by authority. It is fairly vested there because the grievance procedure is capable of adequately recompensing employees for abuse of authority by supervision.

The Grievant did not object to the veneer lay-up work assignment because it involved an unusual health hazard or other serious sacrifice. Nor did the Grievant object to the veneer lay-up work assignment because it was criminal or otherwise unlawful. Rather, the Grievant objected to the veneer lay-up assignment because she believed that such an assignment violated the collective bargaining agreement. As Arbitrator Shulman states above, disagreements about whether or not the employer is violating the collective bargaining agreement are precisely the type of disputes that are required to be resolved through the grievance procedure.

Prior to the meeting with Milske, the Grievant's husband, in his capacity as supervisor, told the Grievant that he agreed that she should not have to do the work assignment and indicated that she did not have to do the assignment. The Grievant, however, did not accept this supervisory decision of her husband, but rather, chose to remove the matter from her husband's authority and place the matter before the Company Personnel Manager. Having brought the matter to a higher supervisory authority than her husband, the Grievant is bound by the decision of the higher supervisory authority. It would not be reasonable for the Grievant, or the arbitrator, to conclude that her husband's supervisory opinion was entitled to be given greater weight than that of the Personnel Manager.

In response to the Grievant's repeated claim that the Company was violating the collective bargaining agreement by requiring her to do the veneer lay-up work, the Personnel Manager repeatedly responded that the Grievant should do the work and file a grievance.

Notwithstanding the Grievant's belief to the contrary, the repeated response of the Company was not "badgering," but rather, was sensible advice which the Grievant, to her detriment, chose to ignore.

As the Union argues, the Grievant, the Union President and the Grievant's husband did not believe that the Grievant had been given a reasonable job assignment. Their belief, however, does not excuse the Grievant from the contractual obligation to perform the job assignment and then grieve the reasonableness of the job assignment. Nor does the fact that only Milske advised the Grievant to "work now, grieve later," protect the Grievant from the reasonable consequences of her decision to go home, rather than to perform assigned work.

The Grievant's decision to go home, rather than to perform assigned work was not the product of the heat of the moment. Rather, the Grievant had at least two hours to decide upon her course of conduct. It is not evident that, during these two hours, Milske was abusive toward the Grievant. Rather, the record indicates that Milske listened to the Grievant's arguments; explained why he did not accept her arguments; sought to dissuade the Grievant from quitting; and advised the Grievant that the appropriate course of action would be to perform the assigned work and have the issue of whether or not the Company had violated the collective bargaining agreement resolved through the grievance procedure.

It is evident that the Grievant became upset when she was told of the veneer lay-up work assignment. It is also evident that the Grievant's upset increased during the two-hour conversation with Milske. It is not evident, however, that, during the meeting with Milske, the Grievant was irrational, or otherwise not competent to make decisions.

In the early stages of the meeting with Milske, the Grievant indicated that she would quit rather than perform the veneer lay-up work assignment. Thus, the Union's argument that the length of the meeting and the intensity of the meeting impaired the Grievant's judgment is not persuasive.

The Grievant had knowledge of her medical condition of MS on July 27, 1999, and had consulted with her psychologist concerning this condition on July 28, 1999. As discussed above, Milske did not receive notice of the Grievant's medical condition of MS until September 29, 1999, the day of the arbitration hearing.

On July 28, 1999, Will Hoerning asked Reichwald to consider rehiring the Grievant. It is not evident, however, that Reichwald was advised of the Grievant's medical condition of MS during this meeting. Nor is it evident that, during the processing of the grievance, any Company grievance representative was made aware of the Grievant's medical condition of MS.

By raising the issue of MS for the first time at the arbitration hearing, the Grievant has deprived the Company of the opportunity to give consideration to the claim that MS is a mitigating factor. To allow the Grievant to present this claim to the arbitrator would not only

undermine the parties' contractual grievance procedure, but also, unfairly hold the Company accountable for information that it did not possess at the time that it concluded that the Grievant had resigned her employment. The claim that the Grievant's medical condition of MS is a mitigating factor has not been raised in a timely manner and, thus, will not be considered by the arbitrator.

Contrary to the argument of the Union, the discussion between Milske and the Grievant was not a pointless debate. By her own admission, the Grievant knew that the Company's work rules provide for immediate discharge for failure to accept all reasonable job assignments. By this work rule, the Company has confirmed its significant interest in having employes perform assigned work.

In summary, the Grievant's absence from the worksite on July 27, 1999, was not an excused absence. This absence from the worksite was preceded by several statements that a reasonable person would construe to be a declaration that the Grievant would quit rather than perform the assigned work.

Contrary to the argument of the Union, the Grievant, by her words and conduct, provided Milske with a reasonable basis to conclude that the Grievant had resigned by voluntarily leaving the service of the Company. By accepting the Grievant's resignation, Milske did not discharge the Grievant.

An employe's prior work record is relevant to the determination of whether or not an employer has just cause to discharge an employe. It is not a mitigating factor where, as here, an employe is not discharged, but rather, quits her employment.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The Company did not discharge the Grievant.

2. The Grievant quit her employment with Company.

3. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 4th day of January, 2000.

Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

CAB/mb
6002.doc