

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**WAUPACA COUNTY HIGHWAY DEPARTMENT EMPLOYEES,
LOCAL 1756, AFSCME, AFL-CIO**

and

WAUPACA COUNTY

Case 122
No. 59910
MA-11456

(Glocke Suspension Grievance)

Appearances:

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 44, Stevens Point, Wisconsin, appearing on behalf of Waupaca County Highway Department Employees, Local 1756.

Davis & Kuelthau, S.C., by **Attorney James R. Macy**, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin appearing on behalf of Waupaca County.

ARBITRATION AWARD

On May 2, 2001, the Waupaca County Highway Department Employees, Local 1756, AFSCME, AFL-CIO, (hereinafter "Union") requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide a grievance pending between the parties. Lauri A. Millot, of the Commission's staff, was designated to arbitrate the dispute. A hearing was held before the undersigned on July 11, 2001, in Waupaca, Wisconsin. The hearing was transcribed. The parties submitted post-hearing briefs and reply briefs by October 16, 2001. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to stipulate to the issues to be determined in this case.

The Union frames the issue as:

Did the employer violate the collective bargaining agreement by notifying Thomas Glocke of a two-day suspension for leaving work after eight hours on November 20, 2000?

The County frames the issues as:

Did the County violate Article IX of the collective bargaining agreement when it gave Tom Glocke a two-day disciplinary suspension without pay for the incidents of November 20, 2000?

Based upon the relevant evidence and arguments in this case, the Arbitrator frames the issues as:

Whether the County had just cause to suspend the Grievant for two days for leaving work on November 20, 2000, prior to completing his work assignment? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

Article II – Management Rights

. . .

B) To establish reasonable work rules and schedules of work;

. . .

D) To suspend, demote, transfer, discharge and take other disciplinary action against employees for just cause;

. . .

Article IX – Disciplinary Procedure

. . .

9.02 Any employee may be demoted, suspended or discharged or otherwise disciplined for just cause.

- 9.03 Suspensions shall not be for less than two (2) days, but for serious offense or repeated violation, suspension may be more severe. No suspension shall exceed thirty (30) calendar days.

...

Article XIV – Normal Work Week & Work Day

...

- 14.02 The normal work week shall be forty (40) hours per week to be worked in five (5) consecutive eight (8) hour days, Monday through Friday. The normal hours of work shall be 7:00 a.m. to 12:00 noon and 12:30 p.m. to 3:30 p.m. daily.

...

Article XVI – Authorized Absence

...

- 16.14 General: Unauthorized leave is grounds for disciplinary action.

BACKGROUND AND FACTS

Waupaca County (hereinafter “County”) operates the Waupaca County Highway Department that provides road building and road maintenance functions for the County including snow removal during winter months. The Department has two (2) work locations; the main shop and office in Waupaca and the shop in the town of Helvetia.

Tom Glocke (hereinafter “Glocke”) is a 16-year employee with the Waupaca County Highway Department. Glocke’s current classification is Roller Operator and he works at the Helvetia Shop. During winter months, Glocke has a County snowplowing route in the Town of Union. Glocke’s regular work hours are 7 a.m. to 3:30 p.m. Monday through Friday. Gary Chich is the Helvetia Shop Foreman and is Glocke’s immediate supervisor.

Glocke has a disciplinary history that includes a verbal warning issued during February, 2000. On or about February 24, 2000, Glocke met with Dean Steingraber, Waupaca County Highway Commissioner, regarding Glocke’s manner and use of leave time. Steingraber testified that his “concern was, that, number one, that any of his earned vacation, that he plan it, and not call the day of wanting that time off” because he wanted to ensure that the County work schedule was properly staffed. Steingraber further testified that due to Glocke’s practice

of exhausting his sick leave and vacation leave as soon as it was earned, he informed Glocke that if he wanted time off, he had to request it directly from Steingraber and that failure to do so could result in discipline. This discipline was not grieved.

A second discipline was issued to Glocke on May 18, 2000, for “unauthorized absence” for the dates May 3-5, 2000. Glocke completed an Unpaid and Union Paid Leave of Absence Request Form on May 5, 2000, for these dates. Steingraber testified that the reason Glocke was disciplined was because the leave was “not approved, not authorized” because Glocke requested the leave “after the fact.” This discipline was also not grieved.

The incident giving rise to the pending dispute occurred on Monday, November 20, 2000, when Glocke was called in to work at approximately 3:30 a.m. by Mike Krueger, Waupaca Shop Foreman, as a result of a snowstorm. Glocke reported for work at 4:00 a.m. and was assigned to plow his regular route in the Town of Union. At approximately 12:00 noon, Glocke returned to the Helvetia shop to reload his plow with sand and to speak with the shop foreman. Shop Foreman Gary Chich and Shop Assistant Foreman Karl Driebel were on vacation, therefore, Glocke spoke with Acting Assistant Shop Foreman Louis Adams, a bargaining unit member, and informed him that he had a furnace service appointment at 1:00 p.m. and requested permission to leave work. Adams telephoned the main office in Waupaca and attempted to speak with Road Superintendent Bob Carper. Adams testified that he was told that Carper was not in the shop so Adams telephoned Carper’s car phone and left a message. Adams then re-telephoned the Waupaca Shop and attempted to speak with Highway Commissioner Dean Steingraber, but Steingraber was also unavailable. After another bargaining unit member, Jeff Much, volunteered to complete Glocke’s plowing, Adams told Glocke “if you have to go, you have to go.” Glocke left work and Jeff Much completed Glocke’s plowing route.

Glocke was issued a two-day suspension on December 11, 2000, for an incident described as follows:

At 4:00 a.m. on November 20, 2000 Mr. Glocke was called in to plow the Town of Union roads, his normal assigned area. At noon, Mr. Glocke punched out and left without notifying any supervisor that he was leaving. He had not finished the Town of Union’s plowing. He told his fellow employees t [sic] he had a personal appointment. By leaving the job, Mr. Glocke had an unauthorized absence. Mr. Glocke previously received a written reprimand for unauthorized leave on May 18, 2000. Mr. Glocke must notify his supervisor and request authorized leave. By not requesting authorized leave, and because of previous written discipline, Mr. Glocke will be suspended two (2) days without pay. This discipline is given in accordance with Article IX, 9.03 of the Waupaca County Highway Department Employees Union contract.

Additional facts, as necessary, are set forth below.

POSITIONS OF THE PARTIES

The Union

The Union argues that the County did not have just cause to discipline the Grievant, and as a result, the grievance should be sustained.

The Union argues that Glocke acted in good faith and obtained permission from Acting Assistant Shop Foreman Adams to leave work to attend to his 1:00 p.m. appointment on November 20, 2000. The Union asserts that Adams was the Acting Assistant Foreman and it was reasonable for Glocke to expect that Adams had the responsibility and authority to make decisions regarding staffing at the Helvetia shop. Glocke was present when Adams telephoned the Highway Office and knew that Adams was unsuccessful in reaching the Highway Commissioner and Road Superintendent. The Union argues that Glocke relied upon Adams' attempted contact with the Commissioner and Road Superintendent and that since they were unavailable to Adams, they were similarly unavailable to Glocke, thus Adams was the only person available to authorize him to leave. The Union further points out that Glocke had attempted during his snowplowing route that day to "come across" the Road Superintendent in order to obtain permission to leave for his appointment, though his attempts were unsuccessful.

The Union asserts that the discipline is not justified because Glocke did not take sick leave, leave without pay or any other kind of leave on November 20, 2000. The Union points out that Glocke is normally assigned to work eight hours, that he worked eight hours on November 20, 2000, and, therefore, the County received what it was entitled to from Glocke.

The Union argues that this situation is really one of an employee choosing to not work overtime and cites arbitral precedent in support of an employee's right to do this. The Union notes that when a reasonable excuse is offered by an employee for turning down overtime, the employer is obligated to accept the excuse. The Union asserts that in this instance, Glocke provided a reasonable excuse to Acting Assistant Foreman Adams who accepted the excuse and assigned another employee, Much, to the overtime work. Thus, the County received advance notice that Glocke was turning down the overtime. The Union points out that Much performed the work in a timely manner, that the County and public did not suffer any adverse consequences as a result of Much performing the work, and regardless of whether Glocke or Much performed the work, it was overtime.

For all of the above reasons, the Union argues that the discipline is not warranted and that the Employer violated the collective bargaining agreement.

The County

The County takes the position that Glocke failed to properly request leave without pay and progressive discipline was imposed consistent with the collective bargaining agreement.

The County argues that Glocke violated a County directive when he failed to seek permission from County management when he was to be absent from work. The County points out that Glocke knew in advance of November 20, 2000, that he anticipated leaving during his normal workday to meet with the furnace company. The County asserts that Glocke was placed on notice of how to request leave and leave without pay and cites written notification provided to Glocke on June 19, 1996, October 14, 1996, January 27, 1997, September 29, 1997 and May 27, 1998, as well as a verbal disciplinary action in February, 2000, and a written disciplinary action in May, 2000, which confirm that Glocke was aware of the County's expectations. Further, the County relies upon the admission of Glocke at hearing when he acknowledged that he was given a directive by the Highway Commissioner that when he needed to be absent from work, he needed to receive prior permission from the Commissioner.

The County argues that it was inappropriate for Glocke to obtain permission from Acting Assistant Foreman Adams for two reasons. First, the County argues that due to Glocke's history of "making untimely request for additional time off without pay," he was given a directive by the Highway Commissioner that should Glocke need to be absent in the future, he was expected to obtain prior permission from the Commissioner. The County reminds the Arbitrator of Glocke's admission of this directive during hearing. Second, the County takes issue with Glocke obtaining permission from another bargaining unit member holding the Acting Assistant Foreman position since Acting Assistant Foreman's do not have permission to grant leaves.

The County next takes issue with Glocke's assertion that since the Highway Commissioner was unavailable it was appropriate for Glocke to obtain permission from the Acting Assistant Shop Foreman. The County asserts that the Highway Commissioner was available over the lunch hour and could have been contacted and therefore Glocke should have obtained permission from the Commissioner rather than the Acting Assistant Shop Foreman.

The County points out that the safety of the public of Waupaca County is dependent upon the timely and efficient clearing of snow during snowstorms. Further that the bargaining unit members understand that during snowstorms, they will work overtime until all plowing is complete. The County notes that the snowstorm on November 19 and 20, 2000, was significant. Given the safety issues, the history of bargaining unit members not leaving work until the plowing is complete, Glocke's history of failure to seek prior permission to be absent from work and the County's directive to Glocke to obtain permission directly from the Highway Commissioner, the County asserts that just cause existed to discipline Glocke when he left work on November 20, 2000.

Finally, the County asserts that the discipline imposed by the County was appropriate as a result of Glocke's work history, the two prior disciplinary actions taken due to his continued failure to seek appropriate approval prior to being absent from work, and the language of Article IX of the collective bargaining agreement.

For all of the above reasons, the County argues the grievance should be denied.

DISCUSSION

This case presents a question of whether Glocke properly gained permission to leave the County's workplace on November 20, 2000. The Union asserts that Glocke acted in a reasonable and responsible manner when he obtained approval from Acting Supervisor Adams to leave work to attend an appointment at 1:00 p.m. Alternately, the County contends that Glocke was without authorization to leave the workplace and thus there was just cause to impose discipline.

The Employer bears the burden of demonstrating that the discipline was issued consistent with the parties' collective bargaining agreement. The collective bargaining agreement in this case requires that the County have "just cause" to issue discipline. In order to find just cause for discipline, it must first be shown that Glocke engaged in the conduct for which he was disciplined. Thus, the first question is whether Glocke's departure from work on November 20, 2000, was an "unauthorized absence"?

The record establishes that the Grievant made an appointment on November 19, 2000, at approximately 4:30 p.m. to have his furnace repaired at 1:00 p.m. the following day. Given that Glocke is scheduled to work from 7:00 a.m. to 3:30 p.m., the time of his appointment was during his work day and he would need to obtain permission and some form of approved leave in order to be available for the scheduled appointment.

There is no dispute that the County placed Glocke on notice prior to November 20, 2000, that he was expected to obtain permission directly from the Highway Commissioner when he wanted to leave work or if he was not going to be at work when he was scheduled to be there. Glocke understood the directive and the record reveals that he had ample notification in the form of written memoranda on the subject. He testified that he was aware prior to November 20, 2000, that he was expected, when taking leave without pay, to fill out a form and to obtain permission from the Highway Commissioner in advance. The directive was within the rights of the County pursuant to Article II - Management Rights of the parties' collective bargaining agreement which provides the County with the authority to establish reasonable work rules and the Union does not assert otherwise.

The record establishes that Glocke made no attempt to comply with the directive of Highway Commissioner Steingraber regarding Glocke's absence from work during scheduled hours and the expectation that he obtain permission to attend to his scheduled furnace

appointment. Further, there is no dispute that Glocke left work prior to completing his work assignment on November 20, 2000. Glocke testified that he did not attempt to telephone the Highway Commissioner, nor did he request any form of leave to “cover” for his absence from his regularly scheduled work hours. Given this, I find that Glocke engaged in the conduct for which he was disciplined; he did not have authorization from the Highway Commissioner when he left work on November 20, 2000.

The Union argues that the Grievant obtained permission from Acting Assistant Shop Foreman Adams and therefore his departure from work was an authorized absence. The County counters this argument stating that Adams did not have the authority to excuse the Grievant’s absence for the afternoon of November 20, 2000. The record establishes that Adams was never informed by the County of the nature of his authority when working in an Assistant Foreman capacity. The record further establishes that in the past when Adams needed to respond to a request by an employee to leave work, he has been able to consult with either a Road Superintendent or the Highway Commissioner. In this instance, Glocke testified that Adams “didn’t give me an answer right away,” that he made some phone calls to the Highway Commissioner and Road Superintendent, but “couldn’t get a hold of anybody” and that “he (Adams) came back to me and he says I guess if you got to go, you got to go.” Although the County has the obligation to inform an employee of his authority when filling-in for another employee, Glocke was given a directive from the Highway Commissioner that he was obligated to speak directly with the Commissioner when requesting time off. Lacking this directive, I would find in favor of the Union, but in as much as there is no dispute that the County communicated this directive to Glocke and it was reasonable under the circumstances, Glocke was beholden to follow it.

In response to the Union’s assertion that the telephone call that Adams made to both Road Superintendent Carper and Highway Commissioner Steingraber fulfill Glocke’s obligation to communicate directly with Steingraber, I do not accept this argument. Adams telephoned Carper and Steingraber because he was unaware of how to respond to Glocke’s request to attend his furnace appointment. Adams testified that in the past when he was the Acting Assistant Foreman and the issue of employees leaving work arose, he would contact either the Highway Superintendents or the Commissioner and they would provide him with guidance. Adams’ action was entirely consistent with what he had previously done which was the condoned course of action. Glocke did not request that Adams telephone Carper or Steingraber nor did he wait until either Carper or Steingraber were contacted before he left the workplace. It is clear to me that Adams telephoned Carper and Steingraber on his own volition because he believed he needed to in order to fulfill his job responsibilities and quite possibly to ensure his own job security. It is also clear that Glocke intended to leave work on November 20, 2000, regardless of whether Glocke succeeded in communicating directly with the Highway Commissioner and that he did in fact leave work on November 20, 2000, without communicating with the Commissioner.

The Union argues that Glocke had completed his requisite eight (8) hour workday and was therefore free to leave the workplace. If this argument is valid, then Glocke's departure from work was appropriate and cannot be characterized as unauthorized or an absence. Glocke was scheduled to work his regular shift on November 20, 2000, from 7:00 a.m. to 3:30 p.m. Glocke was called in at approximately 3:30 a.m. and began working at 4:00 a.m. due to a snowstorm. Glocke had completed approximately half of his plow route when he left work. Glocke acknowledged in his testimony that when highway employees are called in for a snowstorm, they normally stay at work until the snowplowing is done. Given the above, Glocke's departure at approximately 12:30 p.m. on November 20, 2000, was prior to the end of his regular shift and prior to the completion of his snowplowing responsibilities which he understood to be his obligation to complete. Therefore, I do not find the Union's argument persuasive.

Given that Glocke was aware that he was expected to obtain permission directly from the Highway Commissioner when he was requesting to be absent from work and Glocke's failure to initiate a telephone call to the Commissioner at any time either on November 19, 2000, or during the morning of November 20, 2000, I find that Glocke's departure from work on November 20, 2000, was an unauthorized absence. Article XVI – Authorized Absence provides the County the contractual right to impose disciplinary action for unauthorized leave. Section 9.03 of the collective bargaining agreement indicates that two (2) days is the smallest increment a suspension may be issued in. In light of the fact that the County has followed the basic principles of progressive discipline and because I conclude that the discipline imposed is not excessive in these circumstances, just cause existed to impose the disciplinary penalty of suspension on Glocke.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

1. Yes. The County had just cause to suspend the Grievant for two days for his leaving work prior to completing his work assignment on November 20, 2000.
2. The grievance is dismissed.

Dated at Wausau, Wisconsin, this 9th day of January, 2002.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator