

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**MILWAUKEE PRINTING PRESSMEN AND
ASSISTANTS' UNION LOCAL NO. 7**

and

SELLS PRINTING COMPANY, LLC

Case 2

No. 60448

A-5967

(Gary Schwartz Grievance)

Appearances:

Murphy, Gillick, Wicht and Prachthauer, by **Mr. George F. Graf**, on behalf of the Union.

Reinhart, Boerner, Van Deuren, S.C., by **Mr. John H. Zawadsky**, on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "Company", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in New Berlin, Wisconsin, on November 30, 2001. The hearing was not transcribed and the parties subsequently filed briefs that were received by January 3, 2002.

Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have stipulated to the following issue:

Whether the Company had just cause to terminate grievant Gary Schwartz and, if not, what is the appropriate remedy?

BACKGROUND

Grievant Schwartz, a Pressman 1 for about a year, was employed by the Company for about 11 years before he was terminated on July 20, 2001 (unless otherwise stated, all dates hereinafter refer to 2001) because of poor work performance. Before becoming a Pressman 1, Schwartz had an unblemished work record.

Sales Representative Linda Wilber testified that the Strong Fund is the Company's biggest customer and that it complained about the poor color quality of its newsletter that was produced on October 25, 2000. She spoke to press room manager Jim DeLisle about the problem and the Strong Fund was given a \$10,000 credit. Schwartz was given a first-step written warning for the poor quality of the Strong Fund newsletter which he did not grieve (Joint Exhibit 3). On cross-examination, Wilber testified that Schwartz signed all the time pulls on June 26 when faulty product for J.B. Power was produced; that she does not know who else was responsible for that problem; and that that run lasted several shifts.

Pressroom manager DeLisle, who formerly worked as a Pressman 1, testified that the Company produces a "high end" product. He said that a Pressman 1 must do quality checks every 10 or so minutes; that Schwartz was disciplined over the October 25, 2000, incident because he was responsible for the poor quality and color fluctuation of the Strong Fund job; and that Richard Adams, the Pressman 1 on the second shift that day, also was disciplined for that poor product (Joint Exhibit 4). DeLisle said that Schwartz subsequently was disciplined and suspended without pay for three days after running poor product for another Strong Fund newsletter on February 13 (Joint Exhibit 5); that, "this was a drastic reoccurrence of the same problem"; that Schwartz showed no remorse when DeLisle spoke to him; and that Schwartz then asked to move back to his prior job as a Pressman 2. DeLisle added that he refused to honor Schwartz's request for a demotion; that the Company has no formal policy governing such reassignments; and that the Pressman 2 was not disciplined over the February 13 incident because he was in charge of registration.

DeLisle added that Schwartz was responsible for the blue scumming problem on a brochure for J.B. Power on June 26 that was run on his web because he sampled the product and that about 1400 out of the 2800 pieces run were no good. He also said that Schwartz at the second step of the grievance said that the samples taken from that job were not his; that Schwartz then again asked to be transferred to the Pressman 2 position; that Schwartz said the press had broken down on June 26; and that he took the Pressman 1 position only because he did not want the Company to hire anyone from the outside.

DeLisle said that the Company did not immediately terminate Schwartz because it wanted to conduct a proper investigation; that Don Valen, a Pressman 2, also was written up

over the June 26 incident because he should have checked things out (Joint Exhibit 8); and that

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this is the first time a Pressman 1 has been fired. DeLisle explained that Schwartz was fired rather than demoted on July 20 because Schwartz would still have quality problems that could lead to a loss of customers and that a demotion would be a poor message to the rest of the employees who must learn to do their jobs properly.

On cross-examination, DeLisle said that some scum is hard to see; that he did not examine all of the bad product produced on June 26; that no bad product was shipped to S.B. Power; and that, "We shipped the job short." He "surmised" that Schwartz was responsible for the June 26 bad product even though his initials were not on all the product as is customary. He also said that several other employees – Dietz, Purdoon, Keith Friberg, Earl Smith, John Simzick (and his crew) – were previously disciplined for producing bad product, and that Schwartz had a clean work record before he became a Pressman 1 in July, 2000.

DeLisle acknowledged that after Schwartz received his second discipline in February, 2001 (Joint Exhibit 5), he asked to be transferred back to his prior position by saying: "I'll take my move back." DeLisle explained that employees Mike Witt and Simzick were allowed to return to their prior Pressman 2 jobs for non-disciplinary reasons pursuant to their requests and that Schwartz could not do so here because such a "message" to other employees would be that they can walk away if they do not properly do their jobs, which is something the Company cannot tolerate because of the need to produce the very highest quality product. DeLisle initially told the Union that all of Schwartz's June 26 time-pulls were lost, but they were subsequently found and given to the Union at the July 20 termination meeting.

Dan Kipp, the Vice-President of Administration, testified that Pressmen 1 Witt and Smith were transferred to Pressman 2 positions on the first shift for "personal reasons", rather than for disciplinary reasons, and that Smith eventually was transferred to a Pressman 2 position on the first shift after the contract was changed regarding shift preferences.

For his part, Schwartz testified that he had a clean work record before he became a Pressman 1 on July 1; that he was a Pressman 2 for about four years before then; that he accepted the Pressman 1 position after everyone else turned it down; that he received his first discipline in November, 2000 (Joint Exhibit 3) because there were dirty PMS on the Strong Fund's cover; and that he did not grieve it because it was "water under the bridge". He said that he told foremen Jim Kaye and Bob Muleeg that he wanted to transfer back to his Pressman 2 position even though that paid about \$3.00 an hour less, and that the Company refused to honor his request.

As for June 26, he said that the foreman approved the color alignment; that he experienced problems with the machine which were not corrected until about 11:45 p.m.; and that he pulled about 1000 samples. He explained that all of his time-pulls that day involved

separate pages and thus were not stapled, unlike the time-pulls that the Company's witnesses

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earlier identified as being his even though they did have staples. Schwartz added that the pre-binding department puts on the staples; that Joint Exhibit 12 contains his handwriting; that the samples and signatures identified (Joint Exhibits 12-13) could not be shipped to any customer; and that such samples could have been placed in the wrong bin by the jogger, or they could have come from the garbage bin. Schwartz told the Company that he did not produce the samples and said that the time-pulls were missing for about 2-3 weeks. He also asked the Company in July to return to his former Pressman 2 position, but to no avail. He subsequently grieved his termination on July 23 (Joint Exhibit 1).

On cross-examination, Schwartz testified that he on June 26 did not have any problems with the press; that the foreman had approved the color; that the scum problem had something to do with color; that he took and marked about 1000 samples; and that Valen's problem that night were caused by water and the rollers shrinking. He said that he has seen the jogger on other occasions pick up the wrong samples; that the scum came from his web; that he does not remember checking the segs; that he "at times" was a competent Pressman 1; and that four years is not long enough to know how to be fully competent in that position. He also said that DeLisle told him after receiving his second discipline that he would be fired if he again made that kind of mistake. He did not grieve that discipline and he did not tell the Union that he wanted to transfer back to his former second pressman position.

Eric Boos, a Pressman 2, worked the second shift on June 26, at which time a power failure of about 40 minutes occurred. That caused major problems for the press which had to be restarted. He said that about 30,000 pieces for the S.B. Power job were run by the end of his shift and that, "the bulk of it was done." He also said that former second shift foreman Jim Hirt had approved and signed for the color adjustment; that Hirt never sampled any product on June 26; and that no product was run after Hirt had signed it.

On cross-examination, Boos testified that the Pressman 1's responsibility is "greater than the rest of the crew"; that the Pressman 1 must make computer entries for a run; that time-pulls represent quality checks; that James Pardun, the Pressman 1 on the second shift on June 26, also did time-pulls. Boos also said that no product was run after the press went down on June 26; that the "Press was down" when the third shift started at 11:00 p.m.; that scummy product was unacceptable for the S.B. Power job on June 26; and that the Pressman 1 is in charge of providing leadership on a job.

Valen, a Pressman 1, worked with Schwartz on the June 26 third shift and received a written warning over his role in that matter (Joint Exhibit 8). He testified that the press was down; that the specials were not done; that there were a "few thousand to go"; that he had to fix a scummy problem; and that "Everything was drying up." On cross-examination, Valen said that the product for S.B. Power was unacceptable and that he does not know what

happened to the web Schwartz was working on at that time.

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POSITIONS OF THE PARTIES

The Union contends that the Company lacked just cause to discharge Schwartz because there are “too many holes in the Company’s case” and that it therefore has failed to meet its burden of proving that Schwartz on June 26 was responsible for the bad product produced that day. The Union also claims that the “Company’s evidence appears to be seriously tainted” because its proof relating to the “chain of evidence is non-existent. . .” The Union asks for a make-whole remedy that includes back pay and, at his option, Schwartz’s return to work as either a Pressman 1 or Pressman 2.

The Company asserts that it had just cause to terminate Schwartz because of the “repeated carelessness and inattentiveness to his job responsibilities” he exhibited when he ran bad product on October 25, 2000, February 13, 2001, and June 26, 2001. It also argues that Schwartz refused to improve his performance even though he was capable of doing so; that “the gravity of the performance deficiencies” warranted his termination; and that “The demotion was not a viable option” because it would not cure Schwartz’s performance problems and because a demotion “would be sending the wrong message to his other employees.”

DISCUSSION

Since he did not grieve these matters, I find that the Company had just cause to discipline Schwartz over the poor quality of his work product on October 25, 2000, and February 13, 2001. I further find that the Company has the absolute right to insist that its employees produce the very highest quality of product possible and that, as a result, it can discipline employees who repeatedly fail to meet its quality standards. See JOHNSON CONTROLS, 95 LA 182 (Dworkin, 1990); INGALLS SHIPBUILDING, 101 LA 683 (Koenig, 1993); REYNOLDS METALS CO., 72 LA 1051 (Frost, 1979); S & T INDUSTRIES, INC., 73 LA 857 (Madden, 1979); INTERSTATE BRANDS CORP., 73 LA 771 (Hamby, 1979). Moreover, the Company can terminate employees who fail to respond to progressive discipline. See BHP PETROLEUM, 102 LA 321 (Najita, 1983); LOCKHEED MISSILES AND SPACE CO., 101 LA 804 (Gentile, 1993); ARDEN FARMS Co., 45 LA 1124 (Tsukijama, 1965). All this is why the Company had just cause to terminate Schwartz over the June 26 scumming problem if the Company has met its burden of proving that he was partly responsible for that problem.

The Company argues that he was responsible because the second shift did not set aside any specials; because Schwartz acknowledged that he did not review the specials that were run on his web; because the time-pull “shows the same scumming as found on the specials”; because fellow employee Valen corroborated that mistakes were made on the third shift; because both he and Schwartz experienced scumming problems on their shift; and because “the same problem occurred on Schwartz’s run. . .”

However, these circumstances must be weighed alongside other factors cutting the other way. Thus, Schwartz accepted responsibility for his earlier October 25, 2000, and February 13, 2001, mistakes by not grieving over them and by even suggesting his own demotion after his February 13, 2001, mistake. Hence, it would be out of character for him to not accept responsibility for the June 26 scumming problem. Moreover, it is difficult to assume that Schwartz on June 26 would willingly pull as “specials” product that was so defective and which the Union claims is “like a death wish to give these to Quality Control people.”

More importantly, it is not at all clear that the “specials” produced at the hearing came from Schwartz’s web on June 26. Thus, pressroom manager DeLisle testified that he initially told the Union that the June 26 time-pulls were lost and that they were first presented to the Union at the July 20 termination meeting. Given Schwartz’s denials that he produced those “specials”, and absent any eyewitness who could testify that he/she saw Schwartz produce that faulty product, the Company’s case turns on whether it can be inferred that Schwartz produced the product attributed to him. (Joint Exhibits 12-13). The Company therefore is required to document its chain of custody so that it can be conclusively established that that product was produced by Schwartz. The Company also is required to explain who collected those specials on June 26-27 and why they were lost. By failing to do any of that, the Company has failed to rebut Schwartz’s claim: “I know I did not run these.” Since the Company bears the burden of proof in discipline cases, I conclude that the Company has failed to meet its burden of proving that Schwartz, in fact, was responsible for the faulty product that was mysteriously lost. The Company thus lacked just cause to terminate him.

To rectify that contractual violation, the Company shall immediately make Schwartz whole by paying to him a sum of money, including all benefits, that he would have earned from the time of his termination to the Company’s offer of reinstatement, minus any monies Schwartz received during that time that he would not have received but for his termination. In addition, and pursuant to the Union’s request, Schwartz shall have the option of returning to work as either a Pressman 1 or a Pressman 2.

The Company maintains that a demotion to the Pressman 2 position will not cure Schwartz’s failure to meet the Company’s exceptionally high quality standards and that it would send the “wrong message” to other employees. Since Schwartz worked as a Pressman 2 without incident, and since the Company here has failed to meet its burden of proving that Schwartz was responsible for the June 26 scumming, it is not at all certain that Schwartz will have any further problems in producing a quality product. It also is far from certain that such a demotion constitutes a “wrong message” to other bargaining unit employees. The Company here, after all, has demonstrated that it will not tolerate bad product and that it will go to the mat whenever it is produced. Hence, the only “message” being sent here is that employees

risk losing their jobs if they repeatedly produce bad product and that Schwartz is being

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returned to work only because the Company did not properly account for who produced the scumming samples which form the core of the Company's case. Moreover, it must be emphasized that this Award turns on the very unique facts of this case and that, as a result, nothing herein should be misconstrued to mean that employees have the right under the contract to generally bump into lower classifications.

Lastly, and in accord with the parties' agreement, I shall retain my jurisdiction for at least sixty (60) days to resolve any questions that may arise over application of the remedy.

In light of the above, it is my

AWARD

1. That the Company lacked just cause to terminate grievant Gary Schwartz.
2. That to rectify that contractual violation, the Company shall make grievant Gary Schwartz whole by taking the remedial action stated above.
3. That to resolve any questions that may arise over application of the remedy, I shall retain my jurisdiction for at least sixty (60) days.

Dated at Madison, Wisconsin this 12th day of February, 2002.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

