

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

RAYOVAC CORPORATION

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AREOSPACE WORKERS
LODGE 1406**

Case 177
No. 60344
A-5953

(Grievance of Rudy Lahmann)

Appearances:

Mr. James S. Pachmayer, Human Resources Manager, Rayovac Corporation, 100 Ravovac Court, Fennimore, Wisconsin 53809-0128, appearing on behalf of the Employer.

Mr. Dan Hilbert, Business Representative, International Association of Machinists and Aerospace Workers, 1210 Emerald Terrace, Sun Prairie, Wisconsin 53590, appearing on behalf of the Union.

ARBITRATION AWARD

Rayovac Corporation, hereinafter referred to as the Employer, and the International Association of Machinists and Aerospace Workers, Lodge 1406, hereinafter referred to as the Union, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. Pursuant to a request to initiate grievance arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr. to arbitrate a dispute over the discipline of an employee. Hearing in the matter was held in Madison, Wisconsin on November 29, 2001. Post hearing written arguments were received by the undersigned by January 8th, 2002. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties agreed upon the following issue:

“Was there proper cause to discipline the grievant, Rudy Lahmann and if not what is the proper remedy?”

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE X – DISCIPLINE AND DISCHARGE

SECTION 1. No Employee shall be disciplined or discharged without good and sufficient cause. If it is determined after investigation by the management and a representative of the Union that any employee was unjustly discharged, such employee will be reinstated with seniority rights unimpaired; provided, however, that such investigation must be started by the Union within five (5) working days after notice of discharge is given to the Union by the Company with reasons therefore; and further, that notices of such investigations by the Union must be given to the management in writing. This clause shall not apply for the first three months’ of service as a person’s employment in the Tool Room and Maintenance Department because during this trial period the management shall be the sole judge as to a given person’s fitness to remain in the employ of the Company.

...

ARTICLE XIII – GENERAL PROVISIONS

SECTION 1. COOPERATION. It is agreed that the Union, through its national organization and local officers, committees and employees covered by this contract will cooperate with management in seeing that the workmanship of employees covered by this contract on products of the Company or on other tasks is brought to and maintained at an exceptionally high level to the end that a high degree of operating efficiency shall be reached and maintained and to insure uniform high quality standards.

SECTION 2. MANAGEMENT RIGHTS. The management of the plant and direction of the working forces, including the right to hire, to distribute overtime, suspend or discharge for proper cause, and the right to transfer or relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company. But this provision shall be construed to harmonize and not to nullify any other provisions of this Agreement.

In the practical application of this contract to the everyday activity of the plant, it will be necessary for the Foreman and the rest of the management to make many interpretations of this contract. For the successful conduct of this business, it is imperative and agreed that if any employee disagrees with any interpretation made, that he/she will follow out instructions of his/her Supervisor and take up the matter as outlined in Article XIII. It is agreed that failure to follow out instructions of his/her Supervisor constitutes cause for discipline including discharge.

...

PERTINENT WORK RULES

EMPLOYEE CODE OF CONDUCT

Efficient operation of the Plant depends upon the combined efforts and cooperation of all employees. Misconduct of any type disrupts the operations of the Plant and hampers employee safety, convenience, comfort and contentment.

Whenever a number of persons work together, a reasonable code of conduct is necessary to ensure these ideals. Such a code of conduct has been established for all employees. Violations of these rules may result in corrective disciplinary action ranging from verbal warnings, written warnings, suspensions, and/or immediate discharge. The action taken will vary depending upon the severity of the rule infraction. The rules listed below are not all inclusive.

...

16. Use of abusive, indecent, or threatening language.

...

20. Refusal to follow of failure to carry out authoritative instructions of supervisor- insubordination.

BACKGROUND

The Company operates a plant in Madison, Wisconsin whereat it employs Rudy Lahmann, hereinafter referred to as the grievant, as a second shift mechanic. A mechanic's primary responsibility is to keep the Company's machines in operation. However, on occasion the mechanics are assigned to do building repairs. On March 26th, 2001 the grievant was assigned by first shift Plant Engineer Jack Gordon to repair a door latch in the Employer's

lunchroom. The grievant, when repairing the latch, put it on backwards. Gordon, in reviewing the grievant's work, took seven photos of the backward placed latch, then issued an oral reprimand to the grievant for poor performance.

On March 28th, 2001 Gordon approached the grievant and gave him a work order to repair a leaky valve in a stool in a men's restroom. The grievant was aware that Gordon would soon be leaving the Employer's employ. On their way to inspect the repair job Gordon testified the grievant stated he would only do work he was specifically directed to do and nothing more. Gordon also testified that the grievant stated ... "you will be gone," and also stated "...you will be gone and you will know it" to which Gordon responded "Lucky you". Gordon further testified that he questioned the grievant as to whether this was a threat but that the grievant did not elaborate. Gordon also testified that he informed the grievant he was an A Mechanic and that he was expected to use his own initiative and take whatever action was necessary to prevent flooding in the area. Gordon also testified that he informed the grievant that if he needed any assistance he was to contact his supervisor. Gordon then left for the day.

On March 28th, 2001 the grievant was discussing his March 26th, 2001 verbal reprimand with Union Chair Ernie Koepp at approximately 2:20 p.m. The grievant was questioning why he had to take work orders from Gordon, that it was not the normal practice and that work orders should have to go through the foreman. Koepp testified that at this time Gordon arrived with the work order for the grievant to repair the leaky toilet, that Gordon stated he would take and show the grievant what he needed to do, and that when the grievant asked if he needed any tools that Gordon replied no. Koepp further testified that approximately ten (10) to fifteen (15) minutes later the grievant returned stating the toilet still leaked and that the grievant wanted a meeting with the Production Manager, Randy Sweet. The grievant felt Gordon was harassing him and they met and discussed the matter with Sweet.

During the meeting with Sweet, the grievant explained he felt he was being harassed by Gordon and that he wanted his assignments to come from his immediate supervisor. Sweet told the grievant he would take the matter up with the supervisors, but also told the grievant he had to fix the leaky toilet. Sweet also explained to the grievant he could be disciplined and gave him several examples of things he could be disciplined for. Sweet asked the grievant what he thought of this, and the grievant responded... "You're out of your fucking mind." Thereafter the grievant returned to the production area. Upon his return to the production area the grievant was paged to repair a production machine. After the grievant left Sweet met with the Human Resource Manager Sue Witthun and the Production Supervisor Scott Provost and decided to discipline the grievant for using abusive language, not being in the proper state of mind, and failure to do his job. Provost then sought out the grievant. The grievant was informed of his immediate suspension and Provost walked the grievant out of the plant. Thereafter, on April 2, 2001 the following letter was sent to the grievant:

April 2, 2001

Mr. Rudy Lahmann
2102 Koshkonong Road
Cottage Grove, WI 53527

Dear Rudy:

The intent of this letter is to document your incident of abusive, indecent and threatening language, insubordination, as well as not performing your job duties up to company standards. On March 28, 2001, you did not adequately perform the repair of a leak to a plumbing fixture in the 9D Paperline area. You had intentionally not repaired the item, even knowing that work other than what Jack Gordon told you needed to be done. In addition, you used abusive and indecent language towards Randy Sweet when he asked you to repair the leak properly. You also used abusive, indecent and threatening language towards Jack Gordon when you were initially assigned the work. The abusive and indecent language is a violation of Rule #16 in the Code of Conduct in the Employee Handbook and insubordination is a violation of Rule #20 in the Code of Conduct in the Employee Handbook.

You had a prior incident of insubordination in September of 1996 where you were suspended for 5 days. In addition, you were given a verbal warning on March 26, 2001, for poor job performance. You are being issued a suspension which began on Wednesday, March 28, with a return date of Wednesday, April 4, 2001 for the above incident of abusive, indecent and threatening language, insubordination and poor job performance.

If you have any future occurrences of this nature, it will lead to more severe disciplinary action up to and including discharge.

Sincerely,

Sue Witthun /s/
Sue Witthun
Human Resource Manager

smw

cc: Ernie Koepp Dick Kreutz Chuck Harmon
 Frank Graeber Randy Sweet

Thereafter the instant grievance was filed and processed to arbitration in accord with the parties' grievance procedure. The record also demonstrates the grievant received a suspension for insubordination in 1996.

Employer's Position

The Employer contends the grievant used abusive language towards management, displayed a disrespectful attitude towards management and repeated his actions of stating that he is going to do only what the supervisor tells him to do on work assignments. The Employer contends the assignment of repairing a leaky toilet is well within the grievant's technical competencies. The Employer contends the grievant challenged Gordon when the grievant informed Gordon he was only going to do the specific work that Gordon instructed him to do. The Employer points out that Gordon informed the grievant he was to use his initiative to solve the problem and to prevent possible flooding of the area. The Employer contends that the grievant crossed the line when he stated "You're out of your fucking mind." The Employer contends the grievant was suspended for his abusive, indecent language, insubordination and not performing his job to Company standards.

The Employer argues the grievant repeatedly stated he was only going to do what Gordon specifically told him to do. The Employer points out there is no dispute the grievant stated this. The Employer asserts this behavior displays a disrespectful attitude towards management and such behavior is insubordination. The Employer points out the grievant left the work site to initiate a meeting with the Production Manager despite the fact the plumbing fixture was still leaking.

The Employer also points out the grievant does not dispute he made the statement to Sweet. The Employer argues the grievant's immediate apology demonstrates the grievant was aware this was abusive behavior and is not typical "shop talk". The Employer concludes given the grievant's March 26, 2001 verbal reprimand and the grievant's July 1996 five day suspension for insubordination the Employer had just cause to discipline the grievant. The Employer would have the undersigned deny the grievance.

Union's Position

The Union contends the Employer has used a scatter gun approach to justify disciplining the grievant. The Union argues that when the grievant stated to Gordon that he was ... "running out of time" the grievant meant that Gordon was running out of time to get the grievant because Gordon was leaving the Company at the end of the month. The Union asserts there was no threat. Gordon had recently disciplined the grievant and they did not like each other. The Union also points out that Gordon claimed the grievant had been argumentative yet Koepp's testimony does not support Gordon's claim. The Union also points out Gordon did not put any sense of urgency into this initial conversation nor was there any mention of possible flooding. The Union

further asserts Gordon had a key to the locked door where the shut off valve was located. The Union also questions why Gorgon waited until the second shift to deal with the problem.

The Union contends that Sweet left out the context of his conversation with the grievant when he claimed the grievant used abusive and indecent language. The Union points out Sweet had, after the grievant had explained his concerns of being disciplined by Gordon, listed several examples of how he could be fired for a bad decision or making a wrong phone call. Sweet then asked the grievant what he thought about that to which the grievant made his reply. The Union asserts the grievant was amazed at the absurd answers Sweet listed and made a remark for which he immediately apologized. The Union also points out that Koepp testified Sweet was more concerned about being told he was out of his fucking mind and informed Koepp he was not going to let anyone talk to him that way.

The Union also argues the grievant never refused to fix the leaky toilet. The Union points out that after the grievant tightened the flanges on the toilet it still leaked but only when flushed. The Union asserts this was not an emergency situation. The Union argues there is no evidence the grievant refused to fix the toilet or that he refused to complete the assignment. The Union also argues the Employer did not give the grievant the opportunity to complete the work assignment. The Union also points out that when Provost went to get the grievant the grievant was working on fixing a production line problem.

The Union would have the undersigned sustain the grievance and direct the Employer to make the grievant whole.

DISCUSSION

Herein the Employer issued the grievant a five (5) day suspension for allegedly using abusive, indecent and threatening language, insubordination, and not performing his duties in accord with the Employer's standards. There is no dispute the grievant did use an indecent word when responding to a question from Sweet. However, the Employer has failed to demonstrate that anything in the language used by the grievant, either in his conversation with Sweet or with Borden, was abusive or threatening. At most it was argumentative. While the Employer has a disciplinary interest in making sure the grievant properly performs his duties as he completes his work assignments, the fact the grievant raised issues with how the assignments were made does not rise to a disciplinary action. Sweet's view that the use of an indecent term by the grievant was disrespectful may warrant some disciplinary action. However, nothing in the testimony of either Sweet or Borden leads to a conclusion that the grievant used threatening or abusive language when discussing his work assignment with them.

The undersigned also finds that there is nothing in the record that would lead to a conclusion that the grievant was insubordinate. The grievant was given a work assignment by Borden, fix the leaky toilet. Borden accompanied the grievant to the toilet and explained what he

believed was necessary to fix the problem. One would assume that if there had been a danger of flooding Gordon would have turned off the water before he left. The grievant commenced the job. When he could not correct the problem he got his steward and went to talk to Sweet. At the conclusion of his conversation with Sweet the grievant returned to the plant floor. Upon returning to the plant floor the grievant was paged to repair a production line problem. When Provost went looking for the grievant he found him in the midst of repairing the production line. Thus, there is nothing in the record that would demonstrate the grievant intentionally failed or refused to complete the assignment.

The undersigned would note here that when the grievant told Borden he would only do what Borden specifically told him to do Borden directed the grievant to use his skills and knowledge to correctly finish the job. When the grievant tightened the flanges on the toilet and it still leaked the grievant was aware he needed a parts list and had to shut off the water. The fact that the grievant went to the Plant Manager with his steward to discuss his problem with Borden assigning him work does not lead to a conclusion that the grievant was insubordinate and intentionally failed to repair the toilet. Raising questions about the assignment and the supervisor who assigned it is not, in of itself, insubordination. Particularly when the supervisor who made the work assignment has left the plant for the rest of the day. At the conclusion of the meeting with Sweet the grievant did not refuse to complete the assignment. The undersigned concludes the Employer has failed to demonstrate the grievant was insubordinate.

Therefore, based upon the above and foregoing and the testimony, evidence and arguments presented the undersigned finds the Employer has failed to demonstrate the grievant was insubordinate and intentionally failed to repair an item, and, the Employer has failed to demonstrate the grievant used abusive and threatening language. The undersigned concludes the Employer did not have just cause to suspend the grievant for five (5) days. The Employer is directed to reduce the grievant's discipline to a written reprimand for use of an indecent term and to make the grievant whole for any lost wages.

AWARD

The Employer had proper cause to discipline the grievant for using an indecent term during a discussion with a manager. The proper remedy is a written reprimand. The grievant is to be made whole for any lost wages.

Dated at Madison, Wisconsin, this 28th day of March, 2002.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator

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