

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS, LOCAL UNION 2190 OF THE
MIDWESTERN INDUSTRIAL COUNCIL**

and

STAINLESS TANK AND EQUIPMENT COMPANY

Case 18
No. 61361
A-6022

Appearances:

Mr. George Graf, Attorney, Murphy, Gillick, Wicht and Prachthausen, appearing on behalf of the Union.

Mr. Peter Garson, Attorney, vonBriesen & Roper, appearing on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereinafter referred to as the Union and the Company or ST & E, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was not transcribed, was held on August 23, 2002, in Madison, Wisconsin. Afterwards, the parties filed briefs and the Union filed a reply brief. The record closed on September 27, 2002. Based on the entire record, the undersigned issues the following Award.

ISSUES

This case involves insurance coverage for three bargaining unit employees: Tom Kilian, Robert McDermott and Russell Schmid. With regard to the first two employees, Kilian and McDermott, the parties stipulated to the following issue:

Based on Joint Exhibits 1 through 4, what is the last day of insurance coverage for Kilian and McDermott?

With regard to Schmid, the parties were unable to stipulate to the issue to be decided. The Union frames the issue as follows:

What, if any, insurance coverage is Russell Schmid entitled to under the NLRB settlement?

The Company frames the issue as follows:

What, if any, insurance coverage is Russell Schmid entitled to from ST & E?

Having reviewed the record and arguments in this case, the undersigned finds that the Company's wording of the issue is appropriate for purposes of deciding the portion of the grievance relating to Schmid. Accordingly, the undersigned hereby adopts the Company's wording of the issue relating to Schmid.

BACKGROUND

The Company formerly operated a plant in Cottage Grove, Wisconsin. That plant closed in May, 2001. The Union represents the production and maintenance workers at that plant. The three employees involved herein, Tom Kilian, Robert McDermott and Russell Schmid, were members of that bargaining unit.

When the Cottage Grove plant closed, some employees were offered employment at the Company's Beloit, Wisconsin plant. Some employees accepted the offer; some did not.

Prior to the closing of the Cottage Grove plant, the parties met and negotiated regarding the matter. They ultimately agreed that in exchange for employees volunteering for a layoff (i.e. resigning), the Company would provide them with certain benefits. In a memo dated March 26, 2001, Company President Jim Hammis identified, on page 2 of that memo, what those benefits were. Item #3 in that listing provided thus:

3. ST & E will extend medical and dental insurance coverage for up to 90 days. . . .

After this agreement was reached, the Union prepared a document for employees to sign who wanted to take the early layoff option. The first paragraph of that document provided thus:

I _____ wish to give my notice of intent to take an early layoff, per the Company notice, dated March 26, 2001. The effective date of my layoff will be on my last day of work, which will be _____.

The first two sentences of the second paragraph of that document provided thus:

By agreeing to this early layoff option, I will be granted the following. I will be receiving an extended 90 days of medical and dental insurance coverage, paid by the company, effective from my last day of employment.

FACTS

Kilian and McDermott

Kilian and McDermott signed the early layoff option/severance document just referenced. On his document, Kilian stated in the first paragraph that his last day of work would be May 4, 2001. On his document, McDermott stated that his last day of work would be May 2, 2001.

Joint Exhibit 4 confirms that the dates just referenced in the preceding paragraph were the last days of work for those two employees. Thus, Kilian's last day was May 4, 2001 and McDermott's was May 2, 2001.

Schmid

Schmid was terminated by the Company on March 26, 2001. The record does not contain any facts concerning his discharge. He subsequently grieved his discharge.

Schmid's grievance was discussed at a labor/management meeting on April 2, 2001. During that meeting, Company President Hammis offered to pay two weeks severance pay to settle the Schmid grievance. Union representatives tentatively accepted the offer with the caveat that they had to talk to Schmid, who was not at the meeting, about it.

Another labor/management meeting was held on either April 20 or May 24, 2001 (the exact date is unclear). It is unclear from the record whether the Schmid grievance was discussed at this meeting, and if so, what was said about it. What is clear, though, is that the Union accepted the settlement offer which Hammis had previously made (namely, two weeks severance pay).

Union officials subsequently prepared a document which summarized the status of about a half dozen then-pending grievances. This document contained the following entry concerning the Schmid grievance:

3. RUSSELL SCHMID Management offers 2 weeks of severance, but no accrued vacation, just earned vacation already paid out. AGREEMENT REACHED.

Hammis subsequently signed his initials next to this particular entry on the document, indicating acceptance with what it said.

...

In December, 2001, the parties settled an unfair labor practice case which was then pending before the National Labor Relations Board. Sections 6a and 6b of that settlement agreement provided thus:

6) a. The Employer agrees to pay all contractual obligations under its health insurance coverage in accordance with the provisions of the current collective bargaining agreement between the Union and the Employer, effective May 1, 2000 to May 1, 2002. The contractual obligations under the health insurance plan shall be completed within a timely manner, not exceeding the executory obligations of the parties under this agreement (15 weeks from January 15, 2002).

b. The disputed issues pertaining to the eligibility dates of Tom Kilian, Robert McDermott and Russell Schmid for purposes of determining the Employer's obligation to pay medical expenses shall be submitted to binding arbitration by the selection of one arbitrator, mutually agreeable from the Wisconsin Employment Relations Commission (WERC). Said arbitration shall be binding on the Union and the Employer independent of the provisions of the instant agreement. The arbitration procedure shall be completed within a timely manner, not exceeding the executory obligations of the parties under this agreement (15 weeks from January 15, 2002), unless the delay in completion is caused by the WERC.

DISCUSSION

Pursuant to Sec. 6(b) of the NLRB Settlement Agreement, my task herein is to determine the insurance eligibility dates, if any, for employees Kilian, McDermott and Schmid. With regard to Kilian and McDermott, I find that the 90-day period includes their last

day of employment – May 4 and May 2, respectively. Thus, Kilian is eligible for insurance coverage through August 1, 2001, and McDermott is eligible for insurance coverage through July 30, 2001. With regard to Schmid, I find that as a discharged employee, he was not entitled to any insurance benefits from ST & E. My rationale follows.

Kilian and McDermott

The early layoff option document which Kilian and McDermott signed says in pertinent part that they “will be receiving an extended 90 days of medical and dental insurance coverage, paid by the Company, effective from my last day of employment.”

At issue herein is when the 90 days start to run. Was it on their last day of employment, or was it the day after their last day of employment? The Company argues the former; the Union argues the latter.

To support their contention that the last day of employment is not included in calculating the 90 days, the Union relies on the method of time calculation set forth in the Wisconsin Statutes. Sec. 990.001(4)(a), Stats., deals with how time is computed for statutory construction purposes. It provides that the day of the act or event from which the designated period of time begins to run shall not be included. What this means is that the first day is excluded.

If I was computing time under a state statute in this case, it (i.e. time) would, in fact, be computed as referenced in the statute. Thus, the first day would be excluded. However, I’m not computing time under a state statute in this case. Instead, I’m computing time under a document (namely, Joint Exhibits 2 and 3) which the parties themselves created to govern their own affairs. That distinction is critical. That being so, time will not be computed in this case pursuant to Wis. Stats. Sec. 990.001(4); rather, it will be computed pursuant to the express terms contained in the document itself. The focus now turns to making that call.

The early layoff document contains a provision which specifies when the 90-day clock starts to run. The provision I’m referring to is the phrase “effective from the last day of my employment.” In my view, the meaning of that phrase is not ambiguous. That phrase specifies in very plain terms exactly when the 90-day clock starts to run: it starts on the employee’s last day of employment. Thus, under this document, the 90-day period includes the employee’s last day of work. Applying that plain meaning here, the 90-day clock started to run for Kilian on May 4 and for McDermott on May 2. Counting forward 90 days from there, Kilian’s last day of insurance coverage was August 1, 2001, and McDermott’s last day of insurance coverage was July 30, 2001. Thus, any medical bills incurred by Kilian through August 1, 2001 and incurred by McDermott through July 30, 2001 are to be covered by Company-paid insurance.

Schmid

My discussion concerning Schmid's eligibility for insurance begins with a review of the following pertinent background. The parties agree that following Schmid's discharge and his grieving same, they met and subsequently settled his grievance. They also agree that under that agreement, Schmid received two weeks (severance) pay. What they disagree about is this: does Schmid also get 90 days of insurance coverage (in addition to the two weeks pay). The Union thinks he does; the Company thinks he does not.

According to the Union, Schmid was entitled to the same insurance coverage as was given to the other employees who voluntarily left ST & E's employment. Based on the rationale which follows, I find that Schmid is not entitled to any benefits other than the two weeks pay he received. Thus, he does not get the 90 days of insurance coverage.

First, that finding is consistent with the written settlement terms contained in Joint Exhibit 5. After the grievance was settled at a labor/management meeting, a union representative wrote up what he believed the parties had agreed upon. The Union's summary, which Hammis subsequently signed his initials to indicating assent, says this:

3. RUSSELL SCHMID Management offers 2 weeks of severance, but no accrued vacation, just earned vacation already paid out. AGREEMENT REACHED.

There is nothing in this settlement summary that says anything about insurance benefits. It is completely silent concerning same. It only says that Schmid gets "two weeks of severance." If the parties had agreed that Schmid was to get "two weeks of severance" pay plus insurance benefits, one would think that it would be referenced somewhere in the written settlement summary. It is not.

Second, this finding about the meaning of the written settlement terms is supported by the parties' bargaining history concerning that grievance settlement. In their initial brief, the Union acknowledged that "the subject of insurance for Schmid was never specifically discussed in the meetings leading to the Settlement." If the matter of insurance was never discussed at those meetings, it stands to reason that the parties could not have mutually contemplated that insurance was part of the settlement. Even if it was the Union's intent that Schmid was to get insurance benefits in addition to the two weeks pay, that does not make it the meaning which will be applied here. The reason is this: when arbitrators use bargaining history to help them ascertain the parties' intent, what they rely on is a manifested intent (meaning what the parties directly communicate to each other about their understanding of a proposal); not undisclosed intent. In this case, Union negotiators never told Company negotiators that they thought Schmid was supposed to get the insurance benefits in addition to the two weeks pay. That

being so, Company officials thought Schmid was just getting two weeks pay; nothing more. Union negotiators never said anything to Company negotiators to disabuse them of that notion.

Notwithstanding the foregoing (namely, that the settlement terms in Joint Exhibit 5 don't say anything about Schmid getting insurance, and the matter of insurance not being discussed in the meetings leading to the grievance settlement), the Union essentially asks me to infer that since Kilian and McDermott got insurance benefits, Schmid should have gotten it too. I decline to make that inference. Here's why. The reason Kilian and McDermott got the early layoff package is because they volunteered for an early layoff and, as the Company's counsel put it in his opening statement, they cooperated with the Company in closing the plant. That was not the case with Schmid though. He did not voluntarily leave his employment with ST & E the way Kilian and McDermott did; rather, he was fired. There is nothing in the written settlement terms which indicates that Schmid's discharge was later officially rescinded and converted to a voluntary layoff. If that is what the parties mutually intended, it is logical to assume they would have said so in some written document or had him sign an early layoff document. Insofar as the record shows, they did not. That being so, his status with ST & E remains that of a discharged employee; not an employee who took a voluntary layoff like Kilian and McDermott did. Since Schmid was a discharged employee, he was not in the same category as the employees who volunteered for an early layoff. Only employees who volunteered for an early layoff qualified for the 90 days of insurance benefits. As a discharged employee, Schmid did not qualify for insurance benefits. Hence, he was not entitled to any benefits other than the two weeks pay he received.

In light of the above, it is my

AWARD

1. That based on Joint Exhibits 1 through 4, Kilian's last day of insurance coverage was August 1, 2001 and McDermott's last day of insurance coverage was July 30, 2001. Thus, any medical bills incurred by Kilian through August 1, 2001 and McDermott through July 30, 2001 are to be covered by Company-paid insurance.

2. That as a discharged employee, Schmid was not entitled to any insurance coverage from ST & E.

Dated at Madison, Wisconsin, this 4th day of October, 2002.

Raleigh Jones /s/

Raleigh Jones, Arbitrator

