BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LODGE 1406, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

and

RESEARCH PRODUCTS CORPORATION

Case 3
No. 61563
A-6027

(Suspension Grievance of Orlando Acevedo)

Appearances:

Mr. Steve Thiede, Business Representative, International Association of Machinists and Aerospace Workers, District Lodge 121, appearing on behalf of the Union.

Mr. Jack Walker, Attorney, appearing on behalf of the Company.

ARBITRATION AWARD

Lodge 1406, International Association of Machinists and Aerospace Workers (hereinafter referred to as the Union) and Research Products Corporation (hereinafter referred to as the Company) are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance concerning the suspension of Orlando Acevedo. Hearing on the matter was held on November 21, 2002, in Madison, Wisconsin, at which time the parties presented such testimony, exhibits and other evidence as was relevant to the grievance. The hearing was transcribed. The parties filed briefs by January 22, 2003. Having considered the evidence, the arguments of the parties, the applicable provisions of the contract, and the record as a whole, the arbitrator makes the following Award.

ISSUE

At the hearing, the parties stipulated to the following issue:

Whether the grievant committed poor or careless workmanship on June 7, 2002.

When the Union filed their brief though, it worded the issue differently. Their new wording was this:

> Did Orlando Acevedo commit "poor and careless workmanship" while setting up and operating the Roussell 6-F Blankout Press on June 7, 2002 and if not, needs to be made whole for all losses incurred.

In the decision which follows, I will answer the issue which the parties stipulated to at the hearing.

PERTINENT CONTRACT PROVISIONS

The parties' 1999-2004 collective bargaining agreement contains the following pertinent provisions:

ARTICLE IV – Wage Incentives

> The "Incentive Principles and Procedures" dated December 21, 1993, is made a part of this Agreement.
>
> **Section 1.** The Company shall have the right to install and maintain wage incentives on any and/or all plant operations that can be properly standardized, individual or group, by the following methods: Work measurement standards shall be established by the Company, using continuous stopwatch studies, with the operator to be studied informed in advance that the study will be made. If at all possible, the employee studied shall be the one who normally performs that particular function. The Company will endeavor to set incentive standards in such a manner that an average operator normally working under standard conditions and at a proper incentive pace will be able to earn at least thirty (30) percent above the base rate for that particular job. However, this shall in no way be construed as a guarantee. . .

. . .

ARTICLE XV – Miscellaneous

Section 1. The Company agrees:

. . .

(k) **Discipline and Discharge.** The Company has implemented certain plant rules. The Company has the right to add to, change, or amend such rules subject to arbitration as to reasonableness under Article XII. When the Company disciplines consistent with the present plant rules (or consistent with future plant rules which have either not been grieved within the time limits of Article XII or whose reasonableness has been sustained by an arbitrator), then in any arbitration over such discipline the Arbitrator's authority to review such discipline shall be limited to determining whether the employee in fact committed the offense for which the discipline was imposed. In case of other discipline, a just cause standard of review shall apply.

PERTINENT PLANT RULES

The Company has implemented certain plant rules which bear the same date as the collective bargaining agreement (i.e. December 10, 1999).

Section A of those plant rules includes the following statement: "Second Offense . . . Warning in writing with or without suspension up to 5 work days."

Work Rule 22 is as follows: "Poor or careless workmanship."

Violation of work rule 22 is a basis for progressive discipline.

BACKGROUND

The Company manufactures indoor air products. The Union represents the production and maintenance employees at the Company's Madison and Poynette, Wisconsin plants. Until recently, Orlando Acevedo was a production employee in the Madison plant and thus was in the bargaining unit represented by the Union. He no longer works for the Company. While he was an employee, he was given a disciplinary suspension because of what happened at work on June 7, 2002. What happened that day was this: the press he was operating jammed and became immobile. The Company subsequently determined he was responsible for the jammed press and suspended him for it. The Union filed a grievance on his behalf challenging his suspension. While technically this makes the Union the grievant, Acevedo will hereinafter be referred to in this decision as the grievant.

The grievant's disciplinary history which is relevant to this case is as follows: The grievant started with the Company in August, 1999 as a frame fabricator. He was disciplined at step one on February 7, 2000 and was disciplined again at step one on May 22, 2001 for absenteeism. The reason he received two consecutive step one disciplinary notices was because under the Company's plant rules, the four step discipline is based on a six-month period. Since more than six months elapsed between the February 7, 2000 step one discipline and the May 22, 2001 discipline, the latter was also step one discipline. The grievant was disciplined at step two for poor or careless workmanship on August 1, 2001. The grievant was counseled on June 22, June 27, and July 11, 2001 and February 4, February 6 and March 14, 2002 for negligence consisting of poor or careless workmanship, or safety problems. The grievant received a step one discipline for absenteeism on May 28, 2002. None of these disciplinary actions and/or events were grieved.

The following bargaining history is relevant to this case. Past labor agreements between the Company and the Union had various just cause provisions. Except for the backup just cause provision which is found on page 45 of the parties' current collective bargaining agreement in Article XV, Sec. 1(K), all of these previous references to just cause have been removed over time. The current disciplinary language specifies, at page 44, that "When the Company disciplines consistent with the present plant rules. . .then in any arbitration over such discipline the Arbitrator's authority to review such discipline shall be limited to determining whether the employee in fact committed the offense for which discipline was imposed."

The parties have bargained an incentive pay system. Under this particular incentive system, the anticipated incentive earnings opportunity is 130%. Company Exhibit 4 shows that the grievant's rolling six-week average was consistently above 140%. This figure shows that historically speaking, the grievant worked at a pace that produced earnings for himself on a regular basis which were greater than the earning levels anticipated in the collective bargaining agreement. Such earnings are anticipated under an incentive pay system. Under this particular incentive plan, press operators have an economic incentive to adjust the press downward to be sure the pieces cut cleanly and quickly.

The grievant was a press operator. Press operators control the adjustment of their press. If the press is not adjusted low enough (i.e. if it is set too high), then there are uncut strands of material holding the product and the waste together. When this happens, there is nothing wrong with the product; it just takes more time to remove it from the press than would be the case if the cut was cleaner. By adjusting the press lower, the operator can make the cut cleaner and speed up production. Under the Company's incentive pay system, an operator has an economic incentive to do this because it increases his own earnings. After making an adjustment though, the operator is supposed to go through a procedure called "jogging the press" to make sure that the press is not set too low. That procedure is this: the operator turns a key on the control box and slowly moves the press down to make sure it clears the full

cycle. This way, if there's interference, it is done softly so that no damage is done to the machine. This procedure takes time, and during that time, there is no production. This, in turn, results in lower earnings for the operator.

FACTS

On June 7, 2002, the grievant was assigned to run a 6-F blankout press. The press in question had been overhauled that year and, insofar as the record shows, was in good operating condition. The grievant was familiar with the machine in question, having run it at least 15 times between March 22 and June 7, 2002. On four of those occasions, he had set up the press. He also set up the press on the day in question (June 7, 2002).

After he set up the press, he started running product on it. The machine ran smoothly for an hour and the grievant produced 160 pieces of good product. During that time, the machine gave no indication that the adjusting screw was slipping downward, which happens when the set screw becomes loose. Then, the press jammed on its downward cycle and became immobile.

After the machine jammed, several people tried to unjam it. They were unsuccessful in doing so. One of the people who tried to unjam it was the grievant's supervisor, Frank Jimenez. Jimenez decided to power the machine forward through its cycle. It did not work.

The jammed machine was not easily repaired. It took the Company's maintenance mechanics several shifts to repair the machine.

Afterwards, the Company conducted an investigation to determine what had caused the press to jam. Their investigation revealed the following facts. First, prior to the machine jamming, it (i.e. the machine) gave no indication that the horizontal set screw which holds the adjusting screw in place was slipping downwards which happens when the set screw becomes loose. Instead, everyone agreed that the set screw was tight at the time the press jammed. Since the set screw was not loose, this ruled out a loose set screw as a source of the jam. Second, three employees (maintenance supervisor Bill Sterud and maintenance employees Tom Ballantine and Randy Wodarz) told Company officials that when they saw the press after it jammed, it was stuck in the 5 o'clock position. Third, Company records indicate that the press in question was overhauled in 2002, and was in good working condition at the time it jammed. Fourth, supervisors Esther Saenz and Frank Jimenez interviewed the grievant about the matter. Their questions to him and the grievant's responses were subsequently typed up. That document contains the following pertinent exchange:

> Did you try adjusting the machine to bring it down more? Orlando said No. The G3 has different threads length than the G4, I know about how much thread length is needed for each one.

Based on the foregoing facts, Company officials concluded that the reason the press jammed was because it was set too low by the operator. The Company surmised that what happened was that the grievant had adjusted the press lower after making some parts, but afterwards, had not tested the adjustment by jogging the press through an entire cycle as is supposed to be done in order to ensure that the press has not been lowered too far. The Company further surmised that the grievant instead simply "eyeballed" his adjustment and did not test the adjustment by jogging the press through the cycle. The Company concluded this constituted operator error because his "eyeballing" was off and the press jammed on the first cycle when he applied the power.

When this decision (i.e. that operator error caused the jam) was made, it was shared by every Company maintenance person, including Union steward Jeff Christianson. However, at the hearing, Christianson testified that he does not recall saying in a meeting with the other maintenance people that the jam was caused by operator error. He later changed this statement and said that even if he did say that operator error had caused the jam, he had changed his mind and concluded that the jam was not caused by operator error. He testified that the reason he concluded it was not operator error was this: 1) the set screw was tight; and 2) the press was jammed in the 6 o'clock position – not the 5 o'clock position (as the other witnesses testified it was).

At the hearing, the grievant did not offer an opinion on why the press jammed. He also did not offer an opinion on the position the press was in when it jammed. Finally, he did not say at the hearing that he had not adjusted the press before it jammed. Neither side asked that question of him.

POSITIONS OF THE PARTIES

Union

The Union notes at the outset that the Company has the burden of proof in this matter. It believes that in order to meet its burden of proof, the Company must show that the grievant caused the accident in question by omitting some reasonable precaution in the performance of his work duties. The Union's position is that the Company did not prove that, so the grievant should not be held responsible for the fact that the press jammed on June 7, 2002 with resulting damage. The Union avers that the reason the press jammed that day is unknown. Building on that premise (i.e. that the cause of the press jam is unknown), the Union argues that the accident which occurred that day was not his fault and he should not have been disciplined for it. It elaborates as follows.

As was just noted, the Union's position is that the grievant should not be held responsible for the fact that the press jammed on June 7, 2002. It notes in this regard that it is undisputed that the grievant set up the press properly because before the press jammed, it had run 160 quality parts. It further notes that the set screw was tight because the press was not making the loud banging noise that it does when the set screw becomes loose. The Union then asks rhetorically: "If it was producing and running correctly, how could poor and careless workmanship enter into it?" The Union avers that the accident which occurred was beyond the grievant's control and thus was not his fault. As the Union sees it, many factors could have caused the machine to jam. The factors which the Union relies on are as follows.

First, it notes that the machine involved was 38 years old. It asserts that there may be a causal connection between the machine's age and the fact that it suddenly jammed after running smoothly on June 7, 2002.

Second, it calls the arbitrator's attention to the fact that the press in question, like other machines at the Company, has broken down before. It asserts that previously, the brakes have shattered and there have been worn bearings. It submits that since these things have happened in the past to that machine, they could have occurred on the day in question as well. The Union also raises the possibility that perhaps there was too much tonnage for the die, a weak shaft or dull dies.

Third, the Union contends that "nobody really knows for sure" what caused the press to jam on the day in question. To support this premise, it notes that the Company does not have an expert at their facility trained by the Company that built the 6F Blankout Press, nor did they contact one. It further notes that the mechanic and engineers who testified in this case have never been to any classes or school related to this machine or its manufacturer. Building on the foregoing points, the Union implies that all of the people involved here (i.e. the machine operator, the maintenance personnel and engineers) did not have the proper training.

Fourth, the Union asserts that the mechanics who testified gave conflicting stories and could not agree why the machine jammed. What the Union is referring to here is the fact that the witnesses did not agree what position the press jammed in: specifically, was it in the 5 o'clock or the 6 o'clock position when it jammed. The Union asks rhetorically: "Who is right and who is wrong about the position of the jam, and how much difference does it really make?"

Fifth, the Union calls the arbitrator's attention to the fact that after the machine was already jammed, and various people tried unsuccessfully to fix it, it was supervisor Jimenez who chose to hit the power buttons when the set screw was loose. The Union asks rhetorically: "Did that cause more damage than anything? How are we to really know?" The Union speculates that if Jimenez had not done that (i.e. tried to cycle the press forward under power), then mechanic Christensen "would have been able to unjam the press fairly easily."

Aside from the foregoing arguments about the cause of the jammed press, the Union also calls the arbitrator's attention to the fact that four people who were involved in this matter were not called as witnesses at the hearing by the Company. The four people it references are mechanics Randy Wodarz and Dave Bernstein and supervisors Frank Jimenez and Esther Saenz. The Union wonders aloud why they were not called to testify. According to the Union, their lack of testimony caused "gaping holes in the Company's theory as to why this press jammed" and "leaves a lot of unanswered questions."

The Union also calls the arbitrator's attention to the fact that, at the hearing, the Company did not offer, as evidence, any visuals of the jammed machine or broken parts that were replaced. The Union implies this is significant.

In sum then, the Union maintains that while the jammed press was "totally out of his control", the Company nonetheless put the blame for it on him. The Union believes this was wrong and should be remedied by the arbitrator.

As a remedy, the Union asks that the grievant be made whole for his five-day suspension. The Union submits that the fact that the grievant no longer works for the Company should have no bearing on this matter.

Company

The Company's position is that the reason the grievant's press jammed on June 7, 2002 was operator error. According to the Company, the grievant was responsible for the jammed press because he adjusted the press down to get cleaner cuts and faster production and afterwards failed to jog the press through the cycle to test his adjustment. His eyeballing was off, and the press jammed on the first cycle, when he applied the power. The Company avers this operator error violated work rule 22, "poor or careless workmanship", which is a basis for progressive discipline. It contends that the suspension which it imposed on the grievant was in accordance with the plant rules. It elaborates as follows.

The Company argues that its conclusion that the press jammed because of operator error had a sound industrial engineering basis, to wit: that the press jammed at 5 o'clock, which could only have happened if the operator adjusted the press too low and failed to check it by jogging the press through the entire press cycle. It contends this conclusion is supported by the following facts which were known to the Company as a result of its investigation. First, it asserts that this conclusion was reached by two industrial engineers who testified that the jam had to be caused by the operator adjusting the press too far and failing to test it by jogging through the cycle before applying the power; the result was a jammed press. Second, the Company notes that the operator was familiar with the machine, and there is no claim that he did not know how to operate the machine properly. Additionally, it notes that the grievant

indicated both in the due process interview and at the hearing that he was inclined to eyeball the press, and re-adjust it based on how much noise it made, rather than jogging it. Third, the Company maintains that the only alternative mechanical source for the jamming was ruled out because there was no warning noise which happens when the set screw is loose. Here, everyone agreed that the set screw was tight, not loose. Fourth, the Company calls attention to the fact that the machine was running smoothly and producing good product right up to the jam. Fifth, it further notes that the machine had been overhauled and was in good operating condition. Sixth, it points out that the operator had a work history of negligent acts at work, including numerous earlier instances of poor or careless work. Seventh, it maintains that the operator had an economic incentive under the incentive pay system to adjust the press downward to be sure the pieces cut cleanly, and an economic incentive to refrain from spending the time to test the adjusted setting before resuming incentive production. Finally, it points out that the Company's opinion that operator error caused the jammed press was shared by every maintenance person, with the belated exception of steward Christianson (who first said it was operator error, later changed his statement, and claimed at the hearing that he cannot remember whether he ever said it was operator error).

As the Company sees it, no other industrial engineering or mechanical or scientific explanation was offered by anyone for the press to jam (other than the grievant failing to check the press after adjusting it and before resuming production). While the Union did introduce, or attempt to introduce, evidence about other problems with the press, the Company emphasizes that even the Union does not claim that they were the problem(s) which caused the press to jam on the day in question.

The Company asserts that in contrast to the above, the Union offered no alternative explanation for why the press jammed. Additionally, it notes that the grievant did not offer any proposed reason why the press jammed, nor did he testify about the position of the press when it jammed.

Next, the Company addresses the various arguments raised by the Union. The Company characterizes them all as baseless red herrings.

First, it responds to the fact that the Union sought in their opening statement to adduce evidence that after the accident a lock nut was added to the set screw. It submits that even if this fact had been admitted as evidence, it does not matter because the parties stipulated that the set screw was tight when the press jammed, and therefore the "fix" had nothing to do with this accident, but had to do with the problem of the adjustment screw gradually descending, which the parties agree did not happen in this case. Moreover, even if the set screw had been the problem, the addition of a locking nut would not address whether the operator remembered to tighten the set screw; it would only address the set screw loosening on its own after being tightened.

Second, in response to the fact that the press is 38 years old, the Company submits that there is no causal connection between the age of the press and the fact that it suddenly jammed after running smoothly on June 7, 2002. According to the Company, the Union is speculating.

Third, the Company responds to the argument which the Union advanced in their opening statement that the WEINGARTEN rules should be changed so as to require the employer to ask an employee if the employee wants union representation, before giving the employee due process in potential disciplinary situations. It asserts that issue is not only a red herring, but is also beyond the stipulated issue.

Fourth, the Company responds to the Union's assertion that the machine has failed in the past, "such as the brake shattering, worn bearings, or a jam-up, as in this case." The Company believes that those things have nothing to do with the present event, but the Union raised them because it wants the arbitrator to engage in the speculation that if something else happened in the past, something mysterious might have happened this time. Another trouble with the Union's effort to get the arbitrator to engage in speculation based on references to past events is that such past events were not specifically identified. As a result, no evidence was adduced as to what caused the past events. The Company asks: was it operator error, a defect or failure of a part, or failure of the power supply? According to the Company, the Union should bear the burden of this failure of proof. The Company notes that the only person who testified about prior unspecified press breakdowns was steward Jeff Christianson, and even he admitted that past events involving brakes have nothing to do with the present events. Aside from that though, Christianson never addressed the conclusion of the Company's industrial engineers and the other maintenance staff that the operator must have adjusted the press down too far. Instead, Christianson's testimony was confined to the point that it is the operator's responsibility to tighten the set screw, and if the set screw was loose, that fact would show operator error. He reasoned that since the set screw was not loose, the operator did not commit any error.

The Company maintains that Christianson's testimony is only relevant if the arbitrator needs to determine whether the press was or was not in the 5 o'clock position. He says it was not; the other eyewitnesses who testified, including another maintenance mechanic, say it was. According to the Company, even if it was at 6 o'clock, there is no basis on this record to reach any conclusion other than that the press was adjusted downward too far, and that the operator was responsible for that adjustment.

The Company also argues that Christianson's testimony on other matters is so incredible that his claim the press was at 6 o'clock cannot be credited. The Company further avers that Christianson took his past experience with 5 o'clock jams on other presses, filtered it through his desire that the position his "side" is advocating in this case, and the result is that he now claims he actually saw it at 6 o'clock, when everybody else saw it at 5 o'clock.

Next, the Company comments on what the grievant said at the hearing, or failed to say, about the cause of the jam. It specifically notes that the grievant did not say at the hearing that he had not adjusted the press. The Union did not ask that question of him. While he was asked that question in the Company's due process interview, his response, which is contained in Union Exhibit 3, inferred that after he made an adjustment, he "eyeballed" the thread length, and then started to operate, rather than jogging the press to test his eyeballing. The Company contends that the grievant, not the Company, should bear the burden of the fact that the grievant did not testify under oath that he had not adjusted the press. The Company argues in the alternative that if the arbitrator finds that the grievant did effectively deny adjusting the press, then the Company's contrary conclusion should still be credited.

In sum, the Company believes that the proper result in this case under the agreed-upon rules was a step two disciplinary suspension.

DISCUSSION

I begin my discussion with the following comments concerning the scope of my authority to review the grievant's suspension.

Normally, when I review discipline which an employer has imposed upon a represented employee, I do so pursuant to a contractual just cause provision. Usually, the phrase "just cause" is not defined in the parties' labor agreement. The analytical framework that I traditionally apply in such cases consists of two basic elements: the first is whether the employer proved the employee's misconduct, and the second, assuming this showing of wrongdoing is made, is whether the employer established that the discipline which it imposed was justified under all the relevant facts and circumstances. The relevant facts and circumstances which are usually considered are the notions of progressive discipline, due process protections, and disparate treatment.

While the labor agreement involved here does reference a just cause standard in the last sentence of Article XV, Sec. 1(K), it is clear from its context in that paragraph that the just cause standard referenced there is just a back up provision that only applies in certain situations. Earlier in that section, it specifies: "When the Company disciplines consistent with the present plant rules. . .then in any arbitration over such discipline the Arbitrator's authority to review such discipline shall be limited to determining whether the employee in fact committed the offense for which the discipline was imposed." The language just quoted is the contract language applicable here because, in this case, the Company disciplined the grievant for violating a work rule. That being so, in this case, I will not be applying the traditional just cause analysis referenced above. Rather, the parties have expressly limited my task herein "to determining whether the employee in fact committed the offense for which discipline was imposed." That is the only call which the parties have authorized me to make. The focus now turns to making that call.

In this case, "the offense for which discipline was imposed" was this: the Company determined that operator error caused the jammed press. According to the Company, the grievant violated work rule 22 which proscribes "poor or careless workmanship."

It is apparent from the foregoing that the Company believes fault should be assigned to the grievant for the jammed press. The Union disagrees. In their view, fault should not be assigned to the grievant because, as they put it in their brief, "nobody really knows for sure" what caused the press to jam that day.

The Company believes it knows why the press jammed that day. Their theory is this: the grievant adjusted the press down to get faster production, but afterwards failed to jog the press through an entire cycle in order to test whether he had adjusted the press too low. He had, and the press jammed when he applied the power.

The Company's theory as to the cause of the jam is supported by the following record evidence. First, the machine was running smoothly and providing good product right up to the jam. Second, two industrial engineers testified that given the instant circumstances, the jam had to be caused by the operator adjusting the press too low and failing to test it by jogging through the cycle before applying the power. This testimony was not rebutted. Third, an alternative mechanical source for the jam was if the set screw had become loose, and that possibility was ruled out because there was no warning noise which occurs when the set screw becomes loose. Everyone agreed that the set screw was tight when the press jammed. Fourth, while one of them later changed his mind, all of the Company's maintenance people initially shared the conclusion that operator error caused the jammed press (specifically, that the grievant failed to check the press after adjusting it and before resuming production).

The Union does not even address or respond to the Company's contention that the reason the press jammed was because the grievant adjusted the press too low and failed to check it after adjusting it before resuming production. This is puzzling to the undersigned because one would think that since this was the crux of the Company's case against the grievant, he would have addressed the matter outright at the hearing and denied it. However, that did not happen. Specifically, the grievant did not testify at the hearing that he had not adjusted the press just before it jammed. He was not asked that question by either side. While the Union did not have to ask that question of him, their failure to do so meant that the grievant never expressly denied the Company's contention that he adjusted the press too low and failed to check it after adjusting it before resuming production.

Against that backdrop, the Union raises a number of possibilities which, as they see it, could explain why the press jammed on the day in question. These possibilities are addressed below.

First, in their opening statement, the Union sought to offer evidence that after the accident occurred, a lock nut was added to the set screw. Even if that happened, it does not matter because the parties stipulated that the set screw was tight when the press jammed, and therefore the "fix" had nothing to do with this particular accident. A lock nut being added to the set screw would deal with the problem of the adjustment screw gradually descending, but here the parties agreed that did not happen.

Second, the Union notes that the press is 38 years old. It implies that there is a connection between the age of the press and the fact that it jammed on June 7, 2002. The record evidence does not support such an inference. Here's why. The record indicates that the press was overhauled in 2002. Additionally, both sides agree that the press was running smoothly on the day in question right up until the time it suddenly jammed. Given the foregoing, there simply is no record evidence which establishes a causal connection between the machine's age and the jam.

Another contention which is closely related to the one just addressed is that the press in question, like other machines, has broken down before. It would be one thing if the Union had presented proof that this particular machine had a propensity for jamming like it did on June 7, 2002. However, there is no such proof in the record. Insofar as the record shows, the breakdown involved here was different from what had occurred previously. For example, a previous problem with the machine involved the brakes failing. Union steward Christianson acknowledged that here, though, the brakes had nothing to do with the jam. Additionally, there is no proof in the record that there was another alternative mechanical source for the jam (other than the reason put forth by the Company).

Next, the Union calls attention to the fact that the witnesses disagreed on whether the press was in the 5 o'clock of the 6 o'clock position when it jammed. All the witnesses who testified regarding this matter but one thought the press jammed in the 5 o'clock position. Several of the people who thought the press jammed in the 5 o'clock position were bargaining unit employees who did not have an interest in this case one way or another. Overall, I find their testimony on this point persuasive.

Next, the Union addresses the matter of training and implies that all the people involved here – from the machine operator, to the maintenance personnel, to the engineers – did not have the proper training on the machine in question. While training is certainly a legitimate focus of inquiry for the instant case, the real question is how broad this inquiry needs to be. Specifically, does this inquiry have to include the maintenance personnel and the engineers? I find it does not. My rationale is this: the maintenance personnel and the engineers did not cause the press to jam; they only tried to fix it afterwards and determine its cause. As a result, their training on the machine in question need not be addressed herein. However, the grievant's training does. In this regard, the record indicates that the grievant was an

experienced operator who was familiar with the machine in question and had run it numerous times before. Thus, he knew how to set up and operate the machine. The Union acknowledged this in their opening statement and made no claim to the contrary. Since the grievant was familiar with this machine, he must have known that after he adjusted the press lower, he was to test it by jogging the press through the cycle before applying the power.

Finally, the Union implies that the press jam was made worse when supervisor Jimenez decided to power the machine forward through its cycle. Maybe it was. However, the focus in this case is not on Jimenez's conduct – it is the grievant's conduct. While in some disciplinary cases the employee's conduct can be mitigated by the conduct of others, that is not the case here. The reason is this: in this case, the grievant alone was responsible for the jam that occurred.

Having reviewed all of the explanations and possibilities raised by the Union, it is concluded that none of them can account for the jammed press. I therefore find, just as the Company did, that the reason the press jammed on June 7, 2002 was because the grievant adjusted the press too low, and did not discover this because he failed to check it by jogging the press through the cycle before applying the power. When he hit the power, the press jammed. That was operator error.

As was noted at the outset of this discussion, the parties have contractually agreed that in any arbitration involving discipline for a work rule violation, the arbitrator's authority is "limited to determining whether the employee in fact committed the offense for which the discipline was imposed." I find that the grievant committed the offense for which the discipline was imposed. He therefore committed poor or careless workmanship when he caused the press to jam on June 7, 2002.

Obviously, given that finding, I am not persuaded by the Union's remaining contentions. I am referring to the fact that the Company did not call certain people as witnesses at the hearing, and the fact that the Company did not offer any pictures of the jammed machine into evidence. The Company proved its case without those witnesses and visuals.

Based on the above, I issue the following

AWARD

That the grievant committed poor or careless workmanship on June 7, 2002. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 25th day of March, 2003.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
6496.doc