BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS UNION LOCAL NO. 695

and

ARAMARK UNIFORM SERVICES

Case 2
No. 61759
A-6037

Appearances:

Ms. Naomi Soldon and **Ms. Jill M. Hartley**, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, for the labor organization.

Ms. Heather Runnow, Director of Labor and Employee Relations, Aramark Uniform Services, 2300 Warrenville Road, Downers Grove, Illinois, for the employer.

ARBITRATION AWARD

Teamsters Union Local No. 695 and Aramark Uniform Services are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The union made a request, in which the company concurred, for the Wisconsin Employment Relations Commission to designate a member of its staff to hear and decide a grievance over the meaning and interpretation of the terms of the agreement relating to discipline. The Commission designated Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held on February 7, 2003, in Madison, Wisconsin. A stenographic transcript was made available to the parties by February 27. The company and union submitted briefs on March 24 and March 26, respectively, and waived the filing of reply briefs.

The parties concur that the issue before the arbitrator is:

Did the employer have just cause to discharge the grievant, Tim Stelse? If not, what is the appropriate remedy?

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RELEVANT CONTRACT LANGUAGE

ARTICLES OF AGREEMENT

THIS AGREEMENT, made and entered into by and between **ARAMARK UNIFORM SERVICES, INC. – MADISON**, and its successors, 1212 North Stoughton Road, Madison, Wisconsin, a Delaware Corporation, a wholly-owned subsidiary of ARAMARK Corporation, a Delaware Corporation, hereinafter called the Employer and/or the Company, and the **DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES AND HELPERS UNION LOCAL NO. 695,** 1314 North Stoughton Road, Madison, Wisconsin, an affiliate of the International Brotherhood of Teamsters, hereinafter called the Union.

ARTICLE 7 – UNION REPRESENTATIVES

7.1 The accredited Business Representative of the Union shall be accorded the privilege of being on the property of the Employer, however, the Union Business Representative shall make such presence known to the District Manager or his authorized representative before the start of such visit....

. . .

ARTICLE 10 – UNAUTHORIZED ACTIVITIES

10.1 The Company and the Union mutually agree that in consideration of Article 17, Grievance Procedure and Arbitration, there shall be no authorized strike or slowdown, nor any lockout for the term of this Agreement.

10.2 It is agreed that in all cases of an unauthorized strike, walkout, or any unauthorized cessation of work in violation of this Agreement, the Union shall not be liable for damages resulting from such unauthorized acts of its members .... It is understood that the Secretary-Treasurer or principal Business Agent of Teamsters Union Local No. 695 is the designated officer empowered to authorize strikes, work stoppages, or action which will interfere with the activities required of employees under this Agreement....

. . .

ARTICLE 12 – QUITS AND DISCHARGES

12.1 No employee shall be discharged or suspended except for just cause. Just cause shall include but not be limited to inefficiency, unsatisfactory route and sales work, or a gross insubordination to customers. At least one warning notice shall be given in writing to the union and to the employee before discharge or suspension can be made, except in cases of dishonesty, drinking or alcoholic beverages or drunkenness on the job, use or possession or narcotics, fighting, willful destruction of the Employer's property. Warning notices shall be effective for a period of not to exceed six (6)months. Written notices of discharge or suspension setting forth cause shall be given to the employee with a copy to the Union.

. . .

ARTICLE 17 – GRIEVANCE PROCEDURE AND ARBITRATION

17.1 Time Limit: No grievance shall be filed or processed unless it is submitted to the Employer within ten (10) working days after knowledge of the occurrence of the event giving rise to the grievance.

. . .

ARTICLE 19 – ROUTE REPRESENTATIVES' RESPONSIBILITY

19.1 It shall be the responsibility of the Route Representative to solicit new accounts and retain existing accounts. Route Representatives shall make a consistent and reasonable effort towards this responsibility. In the absence of a consistent and reasonable effort, corrective action may be taken. Any such actions shall be in accordance with Article 12 of this Agreement. The Route Representative shall render all reasonable assistance to their respective managers in collecting outstanding accounts on their respective routes.

OTHER RELEVANT PROVISIONS

Memorandum of Understanding
(from the 1995-1999 collective bargaining agreement)

The following agreements were reached during the course of negotiations:

(1) The Company may establish a sales quota for Route Sales Representatives whose prior quarterly sales average is in the bottom one-third of the market center's sales average for all Route Sales Representatives.

Such quote shall be set individually, taking into account the previous month's individual results. In no case shall the quota be greater than the market center average or $4.00, whichever is higher. The Company may implement the following progressive step of discipline for Route Sales Representatives who do not meet their sales quotas.

Any Route Representative who does not meet the sales quota for the next month, but increases his performance, shall not receive the next step of discipline for that month. Any three (3) months where an individual does not receive discipline shall place him at the beginning of the disciplinary process.

Missing quota first month - Verbal warning.
Missing quota second month - Written warning.
Missing quota third month - Final written warning.
Missing quota fourth month - Three day suspension.
Missing quota fifth month - Subject to discharge.

. . .

ARTICLE 19 – ROUTE REPRESENTATIVES' RESPONSIBILITY
(1995-1999 collective bargaining agreement)

19.1 It shall be the responsibility of the Route Representative to solicit new accounts or increases each day. Employees shall make consistent and reasonable efforts to make sales each day. The Route Representative shall render all reasonable assistance to their respective managers in collecting outstanding accounts on their respective routes.

BACKGROUND

Aramark Uniform Services, the employer, provides rental and sale of uniforms and related goods and services. The company's primary customer service personnel are the Route Sales Representatives (RSR's), represented for collective bargaining and contract administration by Teamsters Union Local No. 695. This grievance concerns the company's termination of RSR Tim Stelse, which the union claims was without just cause.

The Union

In support of its position that the grievance should be sustained, the union asserts and avers as follows:

> Because the company did not provide Local 695 with notice of the alleged warning which led to the grievant's termination, the discharge is procedurally defective and must be overturned. The negotiated language in the collective bargaining agreement mandates that at least one written warning notice shall be given to both the union and to the employee prior to any discharge or suspension. Despite this clear language, the company failed to provide the union with a copy of the Performance Improvement Plan it claims constitutes a written warning and which it subsequently relied upon to discharge the grievant. It is not sufficient for the company to claim the spirit of the requirement was satisfied by its having given a copy to union steward O'Malley; arbitrators have consistently held that stewards have no authority to bind the union or modify an agreement. Nor do stewards have the ability to interpret the collective bargaining agreement on behalf of the unit or in the name of the local. The company was obligated to provide a copy of the discipline to the union business steward, who alone has the authority to bind the union. The company's failure to follow the procedural requirement invalidates the discharge and requires the grievant be reinstated and made whole.
>
> Further, the company failed to provide Stelse with a written warning notice prior to his discharge, in violation of section 12.2 of the collective bargaining agreement, which requires that at least one written warning notice be given to the union and employee before discharge or suspension. Despite the company's arguments, the Performance Improvement Plan was not disciplinary action and did not satisfy the prior notice provision of section 12.2; without such prior written warning, the termination lacked just cause and must be reversed.

There is no indication on its face that the Performance Improvement Plan is formal discipline for the purposes of section 12.2, nor did the company inform Stelse and steward O'Malley as such during their September 6, 2002 meeting. The document does not resemble the traditional disciplinary forms the company had used in the past, contains no identification as a disciplinary notice, and does not include references to progressive discipline as found on true disciplinary notices. Even if the company intended the PIP to serve as written warning, Stelse was clearly not put on notice of such by simply reviewing the written document.

Nor did the company provide such notice during the meeting at which he received the Performance Improvement Plan. Stelse and O'Malley testified credibly that District Manager Hamilton had not referred to the PIP as discipline; while Hamilton testified that he had indeed said so, inconsistencies in his testimony call his credibility into question.

The company portrayed the PIP as guidelines meant to assist Stelse achieve the company's average sales goals; without any of the hallmarks of formal discipline, the company cannot rely on the PIP as the prior written notice necessary before suspension or termination. Because the company thus failed to issue Stelse the written warning notice required under 12.2 of the collective bargaining agreement, his discharge lacked just cause and must be reversed.

Further, the Performance Improvement Plan imposed unreasonable expectations, and cannot be the basis for discharge. It is well-established that an employer cannot unilaterally impose an excessive workload on employees; an employer therefore does not have just cause to discipline an employee for failing to meet an unreasonable workload requirement. The PIP the company relies on would have required Stelse to work far more than 40 hours per week. Not only were the PIP requirements objectively unreasonable on their face, they were clearly out of proportion to the activity that was acceptable from the other Route Sales Representatives. District Manager Hamilton himself admitted that the PIP required Stelse to meet standards above those set for all other employees; in fact, Stelse's requirements under the PIP were double the standards set for the other RSR's. The company clearly lacked just cause for terminating Stelse after he failed to achieve an unreasonable activity level.

Notwithstanding how unreasonable the company's expectations were, Stelse made significant strides toward improving his performance and should not have been terminated. Stelse's primary responsibility was to maintain his existing accounts and sell new accounts, not make sales calls and submit written

proposals. And after receiving the PIP, Stelse vastly improved his sales performance, and in fact far outperformed most of his peers in the sales average category. Because the Performance Improvement Plan set expectations that were both excessive and irrelevant, and because Stelse made significant measurable improvement toward the goals set, Stelse's inability to attain the company's unreasonable expectations do not constitute just cause for discharge.

Further, the company violated past practice when it failed to follow progressive discipline and discharged Stelse for failing to meet certain activity levels. The current collective bargaining agreement eliminated a prior memorandum of understanding under which the company could discipline for failure to meet sales quotas, setting a new standard of "consistent and reasonable effort" - yet all of the company's complaints about Stelse relate to alleged performance failures, rather than the effort he gave. Since the company cited sales numbers as the basis for the PIP and subsequent discharge, and failure to meet sales quotas are no longer a basis for discipline, the termination must fail.

Moreover, the company failed to follow its past practice of applying progressive discipline for alleged deficiencies in sales numbers. In 2001, the prior General Manager informed district managers that a system of progressive discipline would be used for employees' failure to meet sales averages. Although the company failed to offer any evidence this practice had been discontinued, the company failed to follow its own disciplinary procedures in disciplining Stelse. The company did not have just cause to discharge Stelse for a second offense when pursuant to its policy of progressive discipline a written warning was the next step.

Because the discharge was without just cause on several grounds, the grievance must be sustained and Stelse reinstated and made whole for all wages and benefits lost.

<u>The Company</u>

In support of its position that the grievance should be denied, the company asserts and avers as follows:

A routes sales representative's failure to meet sales expectations constitutes just cause. The sales expectations are clear and unambiguous – route sales representatives are expected to make a reasonable sales effort, and if they do not, they may be subject to discipline. The expectation that the RSR's sell to existing and new customers has been in existence for many years; these clear

standards have been communicated not only on sales average, but also on retention and other measures of performance. The parties have specifically recognized that just cause exists to discipline an RSR whose sales work is unsatisfactory against the set standard.

Given the clear and unambiguous language, there is no need to consider practice. Further, given the few occasions of discipline since the new agreement, a contrary practice has not been established. The elimination of the prior letter of understanding regarding discipline for sales-related work does not establish a practice. The suggestion that the prior general manager was considering additional steps in a progressive discipline model, with no indication he ever followed through, does not establish a practice. Even if a progression of several steps were established, this would not survive the plain reading of the agreement nor the arrival of the new general manager. Finally, the arbitrator is limited in defining appropriate discipline, since to impose a progression of discipline would effectively amend the collective bargaining agreement, which the agreement explicitly says the arbitrator cannot do.

The grievant failed to meet long-standing expectations and the terms of his disciplinary notice, and the employer was within its rights to discharge him. When the company required the grievant to meet a higher standard, it did so as an effort to boost him to a point near an acceptable performance level. The grievant knew and understood the expectations. If the union objected to the form of discipline in the PIP or its content, it had an obligation to grieve at that time. Because the grievant and the union failed to grieve the PIP at the time it was imposed, and because neither chose to identify the PIP in the grievance, the arbitrator should not consider whether the PIP could be presented and enforced. That the grievant failed to meet expectations does not appear to be in dispute, and his performance levels speak for themselves. The grievant did not appear to even try to reach expectations.

The discipline does not failed for lack of notice. Steward O'Malley has the authority to file grievances, so that notice to him was sufficient.

The company complied with the clear language of the collective bargaining agreement in defining performance failures and disciplining the grievant. The grievant was properly discharged following a full opportunity to improve.

DISCUSSION

On the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, I find that the company's failure to provide the Performance Improvement Plan (PIP) and a written explanation of discharge to the union local business representative, the company's reliance on the PIP as a written warning notice, and the company's imposition upon Stelse of performance requirements twice those expected of all other Route Sales Representatives, all constituted violations of article 12.2 of the agreement.

Accordingly, it is my

AWARD

That the discharge of Tim Stelse was without just cause, and the grievance is sustained. The company shall rescind the discharge and make Stelse whole for all lost wages and benefits.

Dated at Madison, Wisconsin, this 24th day of June, 2003.

Stuart Levitan /s/
Stuart Levitan, Arbitrator

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