BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SPARTA MANUFACTURING CO.

and

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 140

Case 46
No. 64814
A-6167

Appearances:

Mr. Kevin Lee, Representative, Laborers' International Union of North America, Local 140, 1920 Ward Avenue, Suite 10, LaCrosse, WI 54601, on behalf of the Grievant.

Mr. Jeff Kilpin, 445 Holton Street, Sparta, WI 54655, on behalf of the Company.

SUMMARY AWARD

By agreement of the parties, on August 3, 2005, a hearing was held in the captioned case according to the terms of the parties' 2005-06 labor agreement at Sparta, Wisconsin, before WERC Arbitrator Sharon A. Gallagher. At the close of the hearing, the parties agreed that the Arbitrator could issue a verbal bench award on August 3rd, with a written Summary Award to be issued thereafter. At the hearing, the parties had a full opportunity to submit documentary and testimonial evidence as well as oral argument, all of which the Arbitrator considered in rendering her verbal bench ruling and this written Summary Award.

FINDINGS

1. The 2005-06 labor agreement contains a "cause" standard for discipline/discharge (Article IX, Sec. 1).

2. Unit employees may be disciplined for "violation of a posted work rule" and discipline is normally to be progressive, from the 1st step to the 4th step: verbal warning, written warning, 3-day suspension and "subject to discharge" (Article IX, Sec. 11(a)).

3. The Company has had written Safety Rules and a General Behavior Policy (Jt. Exh. 4) at all times relevant to this case. These documents constitute "work rules" within the meaning of Article IX, Sec. 11(a). At all times relevant hereto, Grievant Gerry Seekamp has had a copy of these work rules in his locker, the Company has posted these rules in the plant where employees can see them and the Company has educated employees, including the Grievant, regarding these rules.

4. Although Article IX provides that discipline shall be progressive, the Company's General Behavior Policy allows the Company to accelerate discipline beyond the normal progressive discipline contemplated in Article IX, Sec. 11(a) in case of "major violations" which include among other things listed, the following:

> . . . 6. Health or safety violations or horseplay which do or could cause serious loss or injury.
>
> . . .

5. On July 1, 2004, the Grievant (a Blaster Operator by bid) was issued a verbal warning for "violation of safety rules" and "carelessness" for failing to put the parking brake on his forklift and damaging a door and failing to file an incident report thereon. The Grievant did not file a grievance regarding this verbal warning.

6. On April 22, 2005 (approximately nine months later), the Grievant received a written warning for "violation of safety rules" and "carelessness" for "an unsafe act of climbing up on top of the blaster and putting yourself in danger on April 21, 2005." There is no dispute that the Grievant's acts on April 21st in attempting to recable the blaster, could have resulted in his serious injury or death. The Grievant's acts on April 21st also constituted a "major violation" under para. 6 of the Company's General Behavior Policy, which would have allowed the Company to accelerate discipline for the incident if it chose.

7. The evidence failed to show that the Company had treated the Grievant disparately or that it otherwise discriminated against him in issuing him a written warning for the April 21st incident.

8. The Union failed to prove that in the past the Company knew and had condoned non-maintenance employees recabling the blaster. The Grievant admitted that he knew that recabling the blaster was not a Blaster Operator duty and that there were maintenance employees in the plant on April 21st who could have recabled the blaster.

9. The Company was not privileged to remove the Grievant from his bid job, Blaster Operator, as of April 25, 2005, as this constituted double jeopardy – punishing Seekamp a second time for the same misconduct for which he had already received a written warning. Nothing in the contract or in Article IX, Sec. 5, would support such double discipline.

Based upon the above analysis as well as the Arbitrator's verbal comments/explanation to the parties on August 3, 2005, the Arbitrator issues the following

SUMMARY AWARD

The grievance is denied in part and sustained in part.

The grievance is denied as the Company did not violate the contract when it issued the Grievant a written warning on April 22, 2005. The Company had just cause for disciplining Grievant for violation of its safety rules (which include the General Behavior Policy) and carelessness on April 21, 2005. The written warning shall remain effective in the Grievant's personal file for one year from the date thereof for purposes of future discipline pursuant to Article IX, Sec. 11(b).

The grievance is sustained regarding the Company's removal of the Grievant from his bid job as additional punishment for his acts on April 21, 2005. Company is therefore ordered to immediately reinstate Gerry Seekamp to his bid job, Blaster Operator in the Back Room. No backpay or any other remedy is due or owing under the facts of this case.

Dated at Oshkosh, Wisconsin, this 16th day of September, 2005.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

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