BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, and its LOCAL 578, UAW

and

OSHKOSH TRUCK CORPORATION of OSHKOSH, WISCONSIN

Case 14
No. 65333
A-6191

Appearances:

George F. Graf, Gillick, Wicht, Gillick & Graf, Attorneys at Law, 6300 West Bluemound Road, Milwaukee, Wisconsin 53213, for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its Local 578, UAW, which is referred to below as the Union.

James R. Macy, Davis & Kuelthau, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903, for Oshkosh Truck Corporation of Oshkosh, Wisconsin, which is referred to below as the Company.

ARBITRATION AWARD

The Union and the Company are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint Richard B. McLaughlin, a member of its staff, to resolve a grievance filed on behalf of Carol Johannes, who is referred to below as the Grievant. Hearing on the matter was held on March 31, 2006, in Oshkosh, Wisconsin. Jessica Wendorff filed a transcript of the hearing with the Commission on April 13, 2006. The parties filed briefs and reply briefs by May 30, 2006.

ISSUES

The parties stipulated the following issues for decision:

Did the Company properly terminate the employee in this case on June 17, 2005, within the meaning of Article 13, Section 3 of the collective bargaining agreement?

If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 5 – GRIEVANCE PROCEDURE

. . .

Step E: . . . The arbitrator shall have the authority to interpret and apply this Agreement to the extent necessary to adjudicate the grievance but shall not have the authority to add to, deduct from, or alter the provisions of this Agreement.

. . .

ARTICLE 13 – TERMINATION OF SERVICE

. . .

Section 3: An employee who is absent from work for three (3) consecutive working days without notice shall be deemed an automatic quit, unless notice was not given for reasons beyond the employee's control. Before the Company terminates the service of any employee under this Section 3, the Company will notify the Chairman of the Union Bargaining Committee of its intention to terminate such services and the reasons therefore.

. . .

CODE OF CONDUCT
OSHKOSH TRUCK CORPORATION

. . .

SPECIFIC REQUIREMENTS

The following specific conduct is required of all employees. Each employee must:

. . .

7. Adhere to Call-in and Sick Leave Policies (see below).

. . .

CALL-IN POLICY

Absences which include tardiness are to be reported before the start of shift. 1st, 2nd and 3rd shift report to the Security Guard, giving name, clock number, supervisor's name, a telephone number to which a return call can be made, reason for absence, and the time and date for expected return to work.

SICK LEAVE POLICY

Employees are to telephone the company nurse immediately after each office visit to a physician or chiropractor reporting condition and expected date of return to work. If appointments are cancelled or changed, employees are to telephone the nurse and report the date of the rescheduled appointment and expected date of return to work, if known. Obtain a "Return To Work" slip if you are off work three (3) or more days due to illness or injury before returning to work.

BACKGROUND

Wayne Alexander, the Company's Human Resources Manager, issued a letter dated June 21, 2005 to the Grievant. The letter is entitled "**TERMINATION CONFIRMATION**", and states:

> This letter is to confirm the termination of your employment effective June 17, 2005. Your medical professional authorized you to be off work through June 12, 2005 and you were to return to work on June 13, 2005. On June 13, 2005, you called in sick advising us that you would return to work on June 14, 2005. As you are aware, we have not heard from you since that called in absence. . . .

References to dates are to 2005, unless otherwise noted.

The Grievant began work for the Company as a 201 Assembler on October 15, 2001. At the time of her termination, she was a 301 General Assembler. She had to bid for that position. As a 301 General Assembler, the Grievant became part of the Company's expansion into a facility know as Harrison Street. The Company made a significant investment in the Harrison Street facility for it to house a tear-down and refurbishing process to repair or rebuild vehicles damaged in the Iraq conflict. Military contracts govern this work. The contracts include strict timelines for the work as well as fines to enforce those timelines. The Harrison Street facility was to open in August, and the Company anticipated using the Grievant as one of the 301 General Assemblers who would staff the facility.

The Grievant was unable to work virtually all of May. She worked on Friday, May 20, but could not return the following Monday and was not scheduled to work again until June 13. During this period, the Grievant was under a physician's care for migraine headaches. She kept in contact, during this period, with Harold Hansen, the Company's Claims Manager. On June 13, the Grievant phoned the Security Guard to inform the Company that she could not make it to work, but would report to work on June 14. On June 14, she did not report to work and did not call-in. On June 15, she phoned Hansen, but did not phone the Security Guard.

The Grievant received the June 21 termination notice on June 22. After receiving the notice, she phoned Hansen and then phoned Alexander. Neither offered her any reason to believe the Company would rescind the termination, and the Union responded by grieving the matter, alleging that she "notified Oshkosh Truck about conditions pertaining to her call-ins." Alexander stated the Company's response at Step C, stating:

> (The Grievant) called in sick on June 13, 2005. (She) did not show up for work on the days following the 13th nor did she provide her work status availability. (She) did contact Harold Hansen on June 15, 2005 advising him of a date change for a doctor's appointment – nothing more. (She) continued to be off work without authorization or notice . . .

Rodney Wedemeier, the Company's Director of Human Resources, stated the Company's response at Step D thus: "(The Grievant) did not follow procedure and she failed to report her work status . . ."

The background stated to this point is undisputed. The balance of the background is best set forth as an overview of witness testimony.

Perry Graves

Graves has worked for the Company for twenty years, and has served as Union President since 1999. The Union has received Article 13, Section 3 termination notices regarding employees other than the Grievant. Two of those notices date from 2001, and include the following sentence: "Neither Personnel, Health Services, Security, your Kronos Coordinator nor your Team Coordinator heard from you either by direct telephone or by voice mail." Alexander authored one of those notices. In December of 2004, Alexander wrote a notice, which states: "You have not reported for work or called in your work status since December 1, 2004. . ."

Graves participated in the processing of the grievance from Step C. Graves understood the Company's position, prior to Alexander's written Step C response, to be that the Grievant did not contact the Company at all after June 13. He understood Alexander's written Step C response to be that the Grievant did call Hansen on June 15, but failed to advise him of her work status. During the grievance procedure, the Union told the Company that Hansen told the Grievant on June 15 that she did not have to phone the Security Guard, but should update the Company on her work status as soon as she had seen her doctor.

The Grievant

The Grievant saw her doctor on June 7, and received clearance to return to work on June 13. However, she suffered a recurrence of the migraines starting on June 13. She called the Security Guard on June 13 to advise the Company that she would be unable to report in. She also informed the Security Guard that she hoped to return to work on June 14. She did not, and did not call the Security Guard. On June 15, she continued to suffer from migraines, and phoned Hansen. She described their discussion thus:

> . . . I informed him that I had just called and made a doctor's appointment for June 23rd. He told me – he asked me what was wrong, and I told him it was the same matter, the migraines . . . . He told me to call him back after my doctor's appointment on the 23rd. I asked him if I should call in in between there to the guard, and he said, no, you just call me after your next doctor's appointment. He said he would let (my supervisor) know that I would be off until the 23rd at least [Transcript at 30-31].

She could not see her doctor until June 23 because he was out of town. On June 22, after receiving the termination notice, she phoned Hansen. He denied speaking with her on June 15. She then phoned Alexander, who informed her that she could not hope to get her job back unless she could prove she had been totally incapacitated.

Wayne Alexander

The 301 General Assembler position is more highly skilled than the 201 Assembler. Because the Grievant had reached that level and because she was set to staff the Harrison Street facility, her attendance was significant. Attendance is a sufficiently important issue that the parties' labor agreements have included plant rules governing attendance or express attendance policies since at least 1978. A significant part of this has been the requirement that employees phone in absences to the Security Guard. The Company has never accepted any other type of notice. No Company official can excuse an absence which has not been reported to the Security Guard. The June 21 termination notice does not imply that she should have been more detailed in giving notice. It states that she failed to give proper notice and that proper notice can be given only through the Security Guard.

The Union did not assert during the grievance procedure that Hansen authorized the Grievant's absence. Alexander never meant that the sentence culled by Graves from prior termination notices should imply that notifying anyone other than the Security Guard can suspend the operation of Article 13, Section 3. Alexander has authored many such notices, and most of them do not include that sentence.

Robert Murkley

Murkley serves as the Company's Production Manager. He would have overseen the Grievant at the Harrison Street facility. He was anxious that she return to work because staffing the facility was an important issue. His concern for her absence from work was heightened when he observed her at soccer games and on two occasions at the County Inn, a bar and restaurant. One of the occasions was in March and the other in May. The Country Inn serves food, but is primarily in business to serve alcohol.

Harold Hansen

Hansen's duties include managing Worker's Compensation, short-term absences and disability, as well as Family/Medical Leave claims. On return from an approved leave of absence, an employee must follow the contractual call-in procedure. Only a phone call to the Security Guard can be considered notice of an absence. Hansen has no authority to excuse an absence in place of a call to the Security Guard. His voice mail includes a message advising employees that absences must be reported to the Security Guard. He routinely advises employees of this procedure and sometimes transfers employee calls to the Security Guard.

The Grievant phoned him during the afternoon of June 15. He described the conversation thus:

> I do recall (her) calling in the afternoon of the 15th, and she indicated to me that she was to be – without seeing a calendar, I think it was a Wednesday. And she was to have called – she was to have seen her doctor the following day, the Thursday, the 16th. But she had to reschedule it because her doctor was out of town [Transcript at 79].

He denied saying anything during that conversation that would have relieved the Grievant from the duty to call the Security Guard and denied telling her they had not spoken on that date.

After their June 15 discussion, Hansen was confused regarding when she was authorized to return to work. He called her doctor's office, and was informed him that she was authorized to return to work on June 13 and that the office had a return to work slip ready for her. Hansen got a copy of the return to work slip, which states:

> (The Grievant) missed work 5-23, thru 6/12 due to respiratory illness. She can return on 6/13.

The Grievant never provided it to the Company. On or shortly after June 16, Hansen provided the return to work slip to Alexander.

The Grievant did phone him concerning her absences in May and June, but he could not recall how often. He acknowledged he was unsure whether the Grievant phoned him in the

morning or the afternoon of June 15. During that conversation, she did inform him that she had scheduled a doctor's appointment for June 23, and that she was not going to be able to work before then.

Rodney Wedemeier

Wedemeier participated in the processing of the grievance at Step D. The Union did not allege that Hansen had excused the Grievant's absence. In any event, Hansen would not have been authorized to do so. If the Company denied the June 15 phone call at earlier steps, the denial was not of its existence, but of its sufficiency under Article 13, Section 3.

Jay Kopplin

Kopplin is Union's International Representative, and has represented Local 578 since May of 2004. He participated in the processing of the grievance at Step D, and affirmed that Graves informed the Company that Hansen informed the Grievant on June 15 that she need not call in prior to her appointment on June 23. The Union showed the Company a phone log to document the existence of a three minute call on June 15. Wedemeier responded by questioning what could happen during a three minute call.

The Grievant

On rebuttal, the Grievant testified that she has gone to the Country Inn for its Friday fish fry. She and her husband saw and spoke to Murkley at the Country Inn in March. She acknowledged that she saw Murkley at her son's soccer games in April and May. She was not able to watch the games, but went there to bring her son home.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES' POSITIONS

The Union's Brief

After a review of the evidence, the Union notes that its "position in this case is extremely simple", reflecting that Article 13, Section 3 "does not specify a particular method for giving notice of absence in order to avoid being deemed an automatic quit." Company actions toward the Grievant and others "clearly demonstrate" that the June 15 phone call "constituted sufficient notice." The labor agreement states no requirement "that notice be given in a particular way."

The evidence establishes that the Grievant complied "with both the letter and spirit of the notice requirement by her actions." She reported the June 13 absence to the Security Guard, and reported the extended absence on June 15, by phoning Hansen. Hansen's

testimony that he did not tell the Grievant he would "advise her superior of her prolonged absence" can not be reconciled with the evidence. Alexander's assertion that the Union never advised the Company of the "June 15 call and its content" during the grievance procedure "is unbelievable." Any other conclusion ignores credible Union testimony and cannot account for why the Company would deny receiving a phone call on June 15.

Against this background, it is evident that the Company improperly terminated the Grievant. She "clearly notified the Company of her health status and intentions to see her doctor and continue to remain employed" through the June 15 phone call. The Company's defenses cannot be considered credible. Although a good employee, the Grievant cannot be considered so valuable that her presence "was critical to the Company's military contracts". Thus, the absence of a daily status call would not cause the Company undue hardship. The assertion that she was seen at a tavern/restaurant is no more than a personal attack. The underlying facts "have nothing to do with this case."

The Union concludes that the "Arbitrator should set aside the termination of (the Grievant) and order her reinstatement to employment" and adds, "She should be made whole for any loss of benefits or wages."

The Company's Brief

After a review of the evidence, the Company contends that the labor agreement clearly and unambiguously indicates that "failure to properly call-in over a period of three days" results in termination. Arbitral authority confirms that clear language must be enforced as written, without regard to an arbitrator's view of equity. Article 13, Section 3, read with the contractual call-in procedure, unambiguously establishes that a failure to report to the Security Guard for three days constitutes an automatic quit. There is no dispute that the Grievant was aware of the requirement since she followed it on June 13. The procedure "is clear . . . and consistently followed." It is an "absolutely necessary" procedure given the size of the Company's workforce and the nature of its work, including "strict time constraints and potential financial penalties."

Union defenses are neither consistent with the grievance nor with the evidence. The Grievant's call to the Health Services Office is insufficient to work a waiver of the contractual call-in procedure for a number of reasons, including that: she did no more than advise Hansen that she had rescheduled an appointment; Hansen is unauthorized to "by-pass the required call-in procedure"; the Union failed to make the claim during the grievance procedure; there is no evidence that the Health Services Office "has ever given permission to excuse the call-in requirements"; Hansen routinely tells employees he cannot excuse an absence; and the Health Services Office's phone mention advises employees "they must all the Security Guard Office to be excused." That Hansen checked with the Grievant's doctor regarding her condition confirms that Hansen never authorized her absence from work. Among the witnesses, only the Grievant has a reason to alter the content of the phone call. Her testimony is not credible, and seeks to unilaterally extend a medical leave. Her testimony on the severity of her migraines is

also not credible, given her attendance at soccer games and at restaurants on days she claims to have been incapacitated.

To accept the Union's position would exceed the authority granted an arbitrator under Article 5, Step E. The evidence establishes that the Grievant "failed to call-in her absences for three consecutive work days." This is an automatic quit under the labor agreement and "this grievance should be denied."

The Union's Reply Brief

The Company's case rests "on two main points – that Article 13, Section 3 requires specifically the use of the call in procedure . . . and that this has been historically recognized." An examination of Article 13, Section 3 refutes the first point. The provision specifies notice and does not restrict notice to a call to the Security Guard. Company generated documents refute the second point, since they "make it abundantly clear that call ins to various Company sources is sufficient".

The suggestion that the "Union has not been consistent in its position throughout this case" is simply untrue. The Union has consistently asserted that the June 15 phone call is sufficient notice. The Company's position stands in stark contrast. Alexander first claimed there was no phone call to Hansen, then "fell back" on the position that Hansen had no authority to excuse the absence. These facts, more than anything cited by the Company, must guide any credibility determination.

The assertion that the Union's position seeks "to have the Arbitrator add to the terms of the Collective Bargaining Agreement is ridiculous." To the contrary, the Company seeks to add a specific notice requirement to the language of Article 13, Section 3. The grievance should be sustained.

The Company's Reply Brief

The Union's brief ignores that there is no evidence that Hansen "handled absences from work." Similarly, the Union ignores that the Company never claimed it did not receive the June 15 phone call. Rather, the Company claimed that phone call failed to follow the appropriate procedure. The assertion that Hansen excused the absence first occurred at the arbitration hearing. This assertion is belied by the facts. The Health Services Office uses an answering tape that advises employees of the need to call the Security Guard. Hansen consistently advises employees of the need to call the Security Guard. Hansen in fact regarded the Grievant's absence as unexcused, and called the Grievant's doctor to verify the point. Against this background, the "plain fact is that Mr. Hansen never excused" the Grievant.

The assertion that Company documents refer to other forms of notice takes those documents out of context. Past termination letters do no more than emphasize "that the only recognizable call-in procedure is that through the Security Guard Office." Any other

conclusion would create havoc in Company procedures to schedule work. It follows that "this grievance is without merit and should be dismissed."

DISCUSSION

The parties stipulated the issue for decision, but the application of Article 13, Section 3 to the facts cannot be considered simple. In my opinion, the evidence establishes that the Grievant's absences from June 13 do not constitute an automatic quit.

This conclusion requires some preface, which starts with Article 5, Step E. The Company persuasively argues that this section cautions against an arbitrator's use of equity considerations. The force of this argument must be granted, but does not exhaust the restraint urged by that provision. It also cautions against applying the contract to a grievance on any broader a basis than the evidence demands.

This caution is apt on this record. The parties' positions put potentially unit-wide notice issues in dispute. The Company, for example, urges that the provisions of Article 13, Section 3 clearly and unambiguously demand notice be given to the Security Guard, as required by the Code of Conduct's Call-in Policy. The Union urges that this misconstrues the broad reference to "notice" in Article 13, Section 3. Under either party's view, past practice becomes an issue as embodied by the language of prior termination notices or by the consistency of Company administration of call-ins.

The caution is apt because the Grievant's circumstances are unique. The attempt to turn these individual circumstances into a unit-wide issue of call-in notice is not well-rooted in the evidence or in the agreement. What is unique about the Grievant's circumstances is the fundamental ambiguity surrounding her call-in on June 15.

This fundamental ambiguity is not a matter posing the need to allocate doubt regarding a key fact under the burden of proof. Rather, it is a reflection of the ambiguity surrounding the call. That ambiguity flows from the contractual Code of Conduct, which separately specifies Call-in and Sick Leave policies.

Treating Hansen's and the Grievant's testimony as a single issue of credibility oversimplifies this point, by ignoring the fundamental ambiguity noted above. Hansen's testimony specifically acknowledges the ambiguity. He testified that, after the June 15 phone call, he was confused regarding when, and thus whether the Grievant was authorized to return to work. His confusion prompted him to phone the Grievant's doctor's office, leading to his securing the release form which then prompted the Company to invoke Article 13, Section 3.

This action cannot, however, be squared with the provisions of Article 13, Section 3. The reason is that the Grievant as well as Hansen was unclear on when/whether she was medically capable of returning to work. The Grievant fell back on the phone procedures that characterized her sick leave because a recurrence of her migraine symptoms made her return to

work doubtful without further medical consultation. This explains why she called Hansen and why she took his response regarding the rescheduling of the appointment to preclude the need to call the Security Guard.

The attempt to credit either the Grievant's or Hansen's testimony as a whole is not well-rooted in the record. The precision of the Grievant's recall is in question if only because of the migraine symptoms that prompted the call. The precision of Hansen's recall is no less questionable. He initially testified that she phoned in the afternoon. He then relented, acknowledging that the call could have come in the morning, and that her call was one of many he received that day. Either witness would be more than human if their interest did not color their recall. Ultimately, it is impossible to precisely reconstruct the specifics of the June 15 phone call. This impossibility is reflected in the conflicting testimony regarding whether the Grievant, on June 15, had to reschedule an existing appointment. The Grievant testified that she did not cancel any pending appointment, [Transcript at 43], while Hansen testified she "was to have seen her doctor . . . the 16th" [Transcript at 79].

This impossibility, however, supports the Union's case over the Company's. As noted above, Hansen was confused on when/whether the Grievant was released to return to work. There is no reason for his confusion if the Grievant's June 15 phone call was a routine call to report an absence. It was not, however, one of many. It was unique, reflecting that the Grievant, after at least a month-long leave of absence, was attempting to return to work after protracted experience with migraines. It was not clear to either the Grievant or to Hansen when she was medically capable of working. Applied to the contract, this meant it was not clear whether her call and absence fell under the Call-in or Sick Leave policies. Hansen's call to the Grievant's doctor sought to clarify this ambiguity.

His action, however, complicated rather than resolved the ambiguity. Ignoring that the work release form refers to a respiratory illness, and ignoring whether the call should have occurred without the Grievant's release, it is evident that Hansen's action sought to invoke the Call-in Policy. Even if his testimony is credited over the Grievant's, it is not reconcilable to the application of Article 13, Section 3. As Hansen testified, the Grievant informed him on June 15 that her symptoms were severe enough to keep her from work until she could see her doctor and that she could not see him until June 23 because he was out of town. Hansen then secured a return to work form which was issued prior to the recurrence of symptoms that prompted the calls of June 13 and June 15. It is pure speculation to conclude that the doctor would have stood by that return to work form, without first determining the severity of the recurring symptoms. Beyond this, Hansen's testimony is difficult to reconcile with his administrative practice. He stated that he routinely informs an employee to phone the Security Guard, and that he sometimes transfers an employee to the Security Guard. There is no reason to believe he did either on June 15. There would be no reason for him to phone the Grievant's doctor if he was sure she was attempting to excuse an absence rather than report the need for further care. He did not transfer the call.

In my view, the record offers solid reason to believe the Grievant credibly testified regarding the June 15 conversation. Even if it is impossible to recreate with precision what was said and even if Hansen did not specifically advise the Grievant he would notify her supervisor of the absence, the evidence establishes that there was fundamental ambiguity after that conversation concerning when the Grievant was medically cleared to return to work. Nothing in Hansen's or the Company's conduct after that conversation clarified the ambiguity. The assertion that Hansen's testimony shows the Grievant did no more than report an appointment ignores that there would be no reason for her to phone him unless there was an issue under the Sick Leave Policy. More specifically, it ignores that he testified that she informed him she could not report for work until June 23.

Against this background it is not persuasive to conclude that the Grievant's conduct constitutes an automatic quit. Even assuming her failure to call the Security Guard is not "notice" under Article 13, Section 3, the evidence establishes that "notice was not given for reasons beyond the employee's control". It is not necessary to bring unit-wide issues of notice into this analysis. Alexander's assertion that the Company accepts nothing short of incapacitation as an excuse for a failure to notify the Security Guard does not alter this. That assertion presumes the Grievant sought to excuse an absence rather than to advise the Company of the recurrence of symptoms that prompted the leave of absence. The Company's attempt to invoke the mandatory impact of Article 13, Section 3 depends on the validity of the return to work document obtained by Hansen, which presumes that the symptoms reported by the Grievant on June 15 were irrelevant to the release. Each aspect of this argument turns on Hansen's unilateral action, which was "beyond the employee's control" under the terms of Article 13, Section 3. Had Hansen transferred the Grievant to the Security Guard on June 15; had he specifically advised her that she needed to do so; or had he determined her fitness for work through her or her doctor, then there would be no grievance. To take his unilateral securing of a return to work form to trigger the operation of Article 13, Section 3 on these facts unpersuasively makes the mandatory operation of that provision rest on "reasons beyond the employee's control."

Before closing, it is appropriate to tie this conclusion more closely to the parties' arguments. The Union persuasively points out that Article 13, Section 3 cannot be considered to clearly and unambiguously establish what "notice" is. The Company's position regarding the clarity of that provision suffers from the fact that it uses language from the Code of Conduct's Call-in Policy to clarify "notice" under Article 13, Section 3. However, this cannot obscure that the Union understates the force of the Company's position regarding the clarity of the two provisions read together. Ultimately, each party acknowledges the difficulty of interpreting the two provisions standing alone by asserting that past practice, embodied in prior termination notices and in administrative procedure, points toward their own interpretation. As noted above, this poses potentially unit-wide issues. The reference in Article 13, Section 3 to "reasons beyond the employee's control", however, introduces a necessary factual determination into its interpretation. As cautioned by Article 5, Step E, this factual determination is crucial in this case, and points toward resolution of the grievance on its unique facts rather than on its unit-wide implications.

Taken to its extreme, the Company's position regarding the interpretation of "reasons beyond the employee's control" reads that reference out of existence. Alexander's position that only near-death incapacity invokes this provision has persuasive force for the reasons argued in the Company's briefs. Staffing may become a nightmare if there is no certainty to how notice of absence is given or how the excuse for an absence is authorized. The nature of the Company's work highlights the significance of this point. The force of this argument cannot, however, obscure that the "reasons beyond the employee's control" reference of Article 13, Section 3 must turn on the facts of an individual case. In my view, this record does not establish that Hansen sought to mislead the Grievant. This cannot obscure that applying the Company's position to the June 15 phone call has that effect by turning an automatic quit on factors beyond employee conduct. This is not a persuasive reading Article 13, Section 3, because it renders the "reasons beyond the employee's control" reference meaningless.

Beyond the contractual implications of this conclusion, the Company's treatment of the June 15 phone call strains the evidence. The Grievant's testimony and conduct show that she knew the call-in procedure. Why would she follow procedure on June 13, and then put her job at risk on June 15 by not following it? The assertion that she manufactured the content of the phone call ignores that her testimony is consistent with her behavior, manifesting that she did not believe her job was at risk. Her behavior manifests the proven ambiguity of her situation, which straddles the line between the Call-in and the Sick Leave Policy. Hansen's calling her doctor manifests his confusion on the point. As noted above, this fundamental ambiguity is the central fact of this grievance. The Company's attempt to resolve it through the release form obtained by Hansen did not create a credibility dispute. Rather, it created a situation where the automatic quit process turned on Company rather than employee conduct.

Evidence regarding what Company or Union representatives stated during the grievance procedure is unhelpful in addressing the grievance. Neither party waived any position asserted here. At most, the conduct highlights the tension between resolving the grievance on its broad implications or on its narrow facts. Evidence concerning the Grievant's ability to dine, to drink, or to watch a soccer game is not helpful to the interpretation of Article 13, Section 3. It may be that the Company sees reason not to extend the Grievant's leave or to use discipline regarding her inability to report for work. Neither of these acts of Company discretion is reviewable under Article 13, Section 3, which does not turn on an act of Company discretion and is the stipulated focus of the grievance.

The issue of remedy is troublesome. The evidence focuses on whether the Grievant's June absences constitute an automatic quit. There is no evidence regarding if or when she became capable of working. The Award thus highlights that her June absences cannot be considered an automatic quit under Article 13, Section 3, and includes a general statement of a make-whole remedy. The retention of jurisdiction underscores the uncertainty of the evidence regarding her ability to return to work and permits the parties time to discuss the point. Further process will be necessary only if those discussions cannot resolve it.

AWARD

The Company did not properly terminate the employee in this case on June 17, 2005, within the meaning of Article 13, Section 3 of the collective bargaining agreement.

As the remedy appropriate to the violation, the Company shall expunge any reference to the June 17 termination from the Grievant's personnel file(s) and shall reinstate the Grievant to employment. The Company shall make the Grievant whole for the wages and benefits, if any, she would have earned but for the June 17, 2005 termination. Because of the uncertainty surrounding the measure of any make-whole relief, I will retain jurisdiction of the grievance for not less than forty-five days from the date of this Award.

Dated at Madison, Wisconsin, this 15th day of August, 2006.

Richard B. McLaughlin /s/

Richard B. McLaughlin, Arbitrator

RBM/gjc
7024