

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
UNITED STEELWORKERS, AFL-CIO-CLC, LOCAL 2138

and

PDM BRIDGE, LLC

Case 7
No. 68503
A-6348

(Schreffler Grievance)

Appearances:

Mr. Richard Luetschwager, Staff Representative, District 2, United Steelworkers, 1244A Midway Road, Menasha, Wisconsin appearing on behalf of United Steelworkers, AFL-CIO-CLC, Local 2138.

Mr. Tony McCauley, Human Resources Director, PDM Bridge LLC, 2800 Melby Street, Eau Claire, Wisconsin, appearing on behalf of PDM Bridge LLC.

ARBITRATION AWARD

United Steelworkers, AFL-CIO-CLC, Local 2138 "Union," and PDM Bridge LLC, hereinafter "Company," requested the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot was assigned to hear the instant dispute. The hearing was held before the undersigned on May 19, 2008 in Eau Claire, Wisconsin. The hearing was not transcribed. The parties offered arguments at hearing at which time the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

Was Mr. Sam Schreffler discharged for just cause in September 2008? If not, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

...

Article V
RIGHTS AND RESPONSIBILITIES

The Company retains the exclusive right and responsibility to manage the business and the plant and to direct the working forces, subject to the provisions of this Agreement.

Among the rights exclusively retained by the Company include, but are not limited to: the exclusive right to establish new jobs, abolish, change or combine existing jobs, change materials, processes, products, equipment and operations, to schedule and assign work to be performed, to hire or rehire employees, promote, layoff and recall employees, demote, suspend, discipline or discharge for cause, transfer employees; to enforce and change reasonable shop rules; to establish qualitative and reasonable quantitative standards, and to judge employee's skills, ability, qualifications, and/or experience and performance with regard to said standards and the determination of safety, health, and protections measures for the operations; and to assign or not assign hours and work.

...

Nothing in this Agreement shall prevent the Company's right to discharge its employees for cause. If any employee is discharged

...

BACKGROUND AND FACTS

The Grievant, Sam Schreffler, was a 23 year employee of the Company at the time of his discharge. The Grievant had worked in the maintenance department for the last 10 or 11 years. The Grievant's supervisor was Philip Barnes, Manager, Facilities Maintenance.

In August, 2008, the Grievant signed an internal position posting for a Lead Maintenance position and was awarded the position. The Grievant was scheduled to begin work in the Lead position shortly after the Labor Day holiday.

The Grievant has a history of disciplinary actions. The Grievant was disciplined on August 3, 2006 for carelessness after turning off a circuit breaker resulting in an employee sustaining a serious injury to his finger. The Grievant was disciplined on April 16, 2007 for not wearing his safety glasses while operating the grinder. While not disciplined, the Grievant

was counseled on July 24, 2007 when he was told him to wear his safety glasses and carry his radio.

The Company fabricates very large steel bridge components that are utilized throughout the United States in the creation of signature bridges. The Company employs greater than 200 represented employees at the Eau Claire location.

On September 2, 2008, the Grievant was working the first shift and was assigned to perform scheduled maintenance on Crane #3. The Company utilizes a Work Order Detail Report which provides instructions for the maintenance employee to follow when completing a maintenance task. The Work Order Detail Report created for Crane #3 included the following instructions:

1. HOOKS-CRACK, WEAR, DEFORMATION
2. SAFETY LATCH; CONDITION, FREE OPERATION
3. WIRE ROPE; SEVERE KINKING, EXCESSIVE BROKEN WIRES, UNDERSIZE DIAMETER, RESULTING IN APPRECIABLE LOSS OF ORIGINAL STRENGTH OR SEVERE STRETCHING.
4. UPPER LINIT (sic) SWITCH MUST SHUT OFF A SORT DISTANCE FROM TOP END (WHEN CHECKING UPPER LIMIT EAST UP TO LIMIT SWITCH, MAKE SURE SWITCH IS WORKING, PREVENT 2 BLOCKING.)
5. INSPECT PENDANT DUST COVERS, LABLES, REPLACE IF NEEDED;

HOOK CONDITION: _____
SAFETY LATCH CONDITION: _____
WIRE ROPE CONDITION: _____
UPPER LIMIT SWITCH: _____
HOIST CHAIN CONDITION: _____

The Report also includes a Work Order Labor section which the employee completes after the task is completed and provides an area for the employee to include comments. The Grievant commented, "9/2/08 = Complete. Also installed good used pendant box old one junk" and noted that he worked four (4) hours completing the task. The Grievant completed this task during the morning of September 2 and his shift ended at 2:10 P.M.

Approximately 12 hours later, the third shift reported for work and an employee started a crane inspection/test for crane #3.¹ The upper limit switch for Crane #3 did not work resulting in the crane block rising to the top and falling off. When the block fell, it struck employee TV in the face. TV was seriously injured, required surgery and was off work for an extended period of time.

On September 3, 2008, the Company directed the following letter to the Grievant:

Sam,

On Wednesday, September 3, 2008, a meeting was held with, Mike Pokony, Phil Bares and myself, regarding the crane incident that took place in the main Shop on September 2, 2008.

On Tuesday September 2, 2008 Sam Shreffler installed a pendant on crane 3 in the Main Shop. Sam failed to look at the jumpers on the old pendant versus the new pendant and did not remove a jumper that need to be removed. He also did not test the pendant thoroughly after he installed it. The new pendant had a jumper in it that needed to be removed, this jumper caused the upper limit switch to be inoperable and on 3rd shift an employee was doing a crane inspection/test and ran the block all the way up. The upper limit switch did not work because of the jumper in the pendant that was replaced by Sam, thus causing the block to jam all the way up and the side of the block fell off striking the 3rd shift employee in the face.

The Company has decided that based on your work rule violations you will be suspended until further notice, so that a thorough investigation of this incident can be completed.

If you have any questions regarding this information, please contact me.

Regards,

/s/
Kellie L. Kron
Human Resources

On or about September 8, 2008, the Company terminated the Grievant effective September 5, 2008 for “violation of the following work rule under actions which shall be cause

¹ There is no evidence or suggestion by either the Union or the Company that anyone used the crane between the time the Grievant completed his work and when TV began operation.

for immediate termination: work Rule B8, Placing fellow employees in apprehension of harm.”

The Union filed a grievance on September 19, 2009 asserting that the Grievant had been “unfairly discharged” and requested his return to employment.

Additional facts, as relevant, are contained in the DISCUSSION section below.

DISCUSSION

This is a discharge case and the facts are not in dispute. The Grievant does not deny working on crane #3 nor does he deny that he did not check to determine whether the crane was in working order after he installed the new pendant box. Further, there was no evidence or argument presented which challenges that the injury sustained by TV was the direct result of the Grievant’s failure to properly install the pendant box.

I start with the Company’s reason for discharge. Article V of the labor agreement provides that the Company may discharge any employee for just cause. The reason cited for the termination was “[p]lacing fellow employees in apprehension of harm.” According to the Company General Work Rules, this is an offense that does not require progressive discipline. The Grievant was aware of these work rules as evidenced by his signature acknowledging receipt in 1989 and 1992.

The Union argues that the Grievant should not be held solely responsible for the injury to TV. Rather, the Union cites the Company’s failure to train the Grievant and the Company’s failure to provide a safe working environment as a result of its failure to fix crane #3, as mitigating factors. I am not persuaded.

Starting with the training issue, according to the testimony, the Grievant was never provided pendant box replacement training nor were the maintenance personnel provided electrical or mechanical crane operation and maintenance training. While I find that it would likely have been advantageous for the Company to provide this sort of training, I do not find it to be controlling. The Grievant testified that he had changed half a dozen pendant boxes during his employment with the Company. A pendant box controls the movement of the crane. The Grievant changed the box and believed he had properly changed the box. The Grievant was in error. Yet, the Grievant could have rectified his error had he checked to determine whether the pendant box that he had just replaced was in working order. If that had occurred, he would have operated the crane, elevating the hoist to the point at which the upper limit stopping mechanism should have been activated at which time he would have immediately noticed that the block did not stop and the injury to TV would have been avoided.

The Grievant was provided written instructions which included the directive to check the crane after he completed the installation to ensure that it was in proper working order. There was also testimony that checking a machine to determine if it works is “standard

practice” for some maintenance personnel. The Grievant did not check to see if the pendant had been properly installed. Had the Grievant followed the instructions contained on the scheduled maintenance form, applied what could be viewed “industry standard” or at a minimum, a common sense approach, he would have identified that the upper limit had not been established and that the crane was not in safe working order.

The Union next argues that the Company was aware that crane #3 did not have an upper limit shut off paddle and that as a result of that knowledge, it was partly responsible for the injuries that were sustained. The minutes from safety committee meetings establish this fact. They also establish that the Grievant likely was at the May 2, 2008 meeting when this issue was discussed. While I find some degree of merit to this argument, it is insufficient to overcome the immediate termination language of the work rules coupled with the Grievant’s failure to check his work.

The Grievant held a position of distinct responsibility. He not only was entrusted to make certain that the Company equipment was in working order and available for operation, but he was also responsible for the safety of his co-workers. This was the Grievant’s second instance of negligent behavior resulting in an injury to a co-worker. In both cases, he claimed that “no one provided him training” and did not take responsibility for his actions. The Company’s decision to terminate the Grievant was not arbitrary, capricious, or an abuse of management discretion and therefore I do not have reason to substitute my judgment for that of the Company.

AWARD

Yes, Mr. Sam Schreffler discharged for just cause in September 2008. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 6th day of August, 2009.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator