BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA COUNTY

and

LOCAL 990 (JAIL STAFF), WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

Case 283
No. 69210
MA-14528

Appearances:

Nicholas Kasmer, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 580734, Pleasant Prairie, Wisconsin, appeared on behalf of the Union

Lorette Pionke, Senior Assistant Corporation Counsel, Kenosha County, 912 56th Street, Kenosha, Wisconsin, appeared on behalf of the Employer.

ARBITRATION AWARD

Local 990 (Jail Staff), Wisconsin Council 40, AFSCME, AFL-CIO, herein referred to as the "Union," and Kenosha County (Sheriff's Department), herein referred to as the "Employer," jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The arbitrator held a hearing in Kenosha, Wisconsin, on January 13 and January 28, 2010. The parties agreed to file post-hearing briefs, the last of which was received May 25, 2010.

ISSUES

The parties agreed to the statement of issues 1 and 4, but did not agree on issue 3, but the parties did agree that I might state the issues. I discuss the statement of the issues below and I state them as follows:

1. Did the Employer violate the collective bargaining agreement when it placed K on accident and sickness leave in February 2009? [1]

[1] The Grievant is identified only by letter because of the medical information contained herein. He will be referred to as "K" throughout the award.

2. If not, is issue number 3 properly before me?

3. If not, did the Employer violate the Americans with Disabilities Act or the Wisconsin Fair Employment Act, by the same actions.

4. If the answer to either 1 or 3 is "yes," what is the appropriate remedy? [2]

FACTS

The Employer is a Wisconsin County. It operates a sheriff's department which, among other things operates the county's jail system. One of the facilities in the jail system is the pre-trial detention center. The Union represents various employees of the Employer including the rank and file corrections officers. Grievant K is a correctional officer in the bargaining unit represented by the Union. A correctional officer performs a variety of duties connected with the operation of jail facilities. Except for light duty, correctional officers are responsible for the control and processing of prisoners in those facilities. It is an essential function of the correctional officer position to be physically able to handle physical confrontations with prisoners.

Corrections Officers work eight hours shifts. It appears the jail is short staffed and, therefore, whenever there is an absence or vacation for staff, other corrections officers fill in by working overtime. Overtime is distributed in accordance with a formula which changed during the period in dispute.

K has been a correctional officer for at least ten years. He was assigned to the Kenosha County Pre-trial facility at all relevant times. He is known as a workaholic in that he accepts all possible overtime and is rarely absent. On about April 5, 2007, K chose to go on leave to undergo cardiac surgery. Shortly after the surgery, K experienced numbness in his left leg and ankle. His doctor told him that it might be a side effect of surgery and to wait and see if it resolved itself.

K returned to work on light duty on July 9, 2007, with an additional restriction to work not in excess of eight hours per day. On September 5, 2007, his doctor released him to perform the full range of his duties, but still kept the eight hour restriction. K made no significant effort to get that restriction lifted. K did not provide any additional medical information to the Employer between then and July, 2008. The Employer did not ask for any.

Chief Deputy Charles R. Smith testified to the actions of the Sheriff's Department. He supervises the Captain who supervises the pre-trial detention center and he wrote the department's light duty policy. In his view, the purpose of the policy is to permit employees

[2] The Employer was also unprepared to proceed on that issue. I ordered that the hearing go forward on the first, second and fourth issues, but that if I reached the third issue, the Employer would be given an opportunity for further hearing on the third issue.

who are close to returning to work to return to work under limited duty. It is his responsibility to handle oversight of light duty situations, but to leave the day-to-day administration to the supervising captain. In this case, he was aware K was on light duty and had been for some time. In his view, light duty includes any restriction on work. Thus, he viewed an eight hour restriction as "light duty" because the employee could not work emergency overtime after eight hours, could not be forced to work non emergency overtime. Shortly before July 31, 2008, he inquired of the Employer's Personnel Director James Olson who is also its risk manager why K remained on his eight hour restriction.

In response Olson sent a letter to K directing him to report for a fitness-for-duty physical examination with Dr. Scott Dresden, a medical doctor who specializes in occupational medicine. Dr. Dresden works with the Employer on a regular basis and is familiar with all of the duties of correctional officers. Dr. Dresden examined K on July 31, 2008, and reviewed his medical records. K's medical records were with the same clinic and available to Dr. Dresden at all material times thereafter. Dr. Dresden concluded that K's cardiac condition might affect his ability to work more than eight hours. K reported numbness with his left leg and ankle which was undiagnosed at that time. Dr. Dresden stated that the numbness in his left ankle and leg could have been a sign of further heart or vascular issues, an unrelated nerve issue or merely a muscular problem. Dr. Dresden concluded that the issue with the leg and ankle had to be medically diagnosed and treated in order for restrictions to be lifted. Dr. Dresden concluded that at the time of the examination the eight-hour restriction was appropriate, but Dr. Dresden expected that in about two months the issue with the ankle and leg could be diagnosed and treated. He expected that at that time K could return to work without any restriction. Dr. Dresden testified, but K denied, that Dr. Dresden told him to report back to Dr. Dresden after the condition had been treated.

Dr. Dresden reported his findings to Olson by letter shortly thereafter which stated in relevant part:

> [K] is able to perform the full duties of his job at this time and has been able to work, per his report, 486 hours of overtime since January 1, 2008. He currently has an 8-hour workday restriction for a condition that yet remains incompletely diagnosed. I advised him to have further work up for this condition. In the interim, I do feel the 8 hours per day work limitation to be warranted. Ideally, he would have this condition further evaluated and possibly treated in the next 1 to 2 months.

K did contact is doctors, but the leg and ankle problem persisted. As of February 24, 2009, K's doctors were continuing to run diagnostic tests on his leg and ankle. Shortly before February 24, 2009, his cardiologist ran an EKG on K which was abnormal and made a notation to that effect in his records. He scheduled K to have a stress test to confirm or correct the EKG findings. K did not make any further medical report to Dr. Dresden or the Employer between the July 31, 2008, examination and the February 24, 2009, examination described

below. K continued to work eight hours per day on his regular work days and many additional shifts on his days off and on his vacation days.

> On February 10, 2009, Chief Deputy Smith wrote to Olson as follows:
>
> Jim, we need to do something on the [K] issue . . . he cannot continue to occupy light duty status (sic) this has been on . . . since 07. . . Pam has asked for several updates on him but has not received any. . . . he has been on restricted status going on 7 months … He needs to be off until he can come back…

Olson again directed K to attend a fitness-for-duty physical to be conducted by Dr. Dresden.

Dr. Dresden again conducted an examination of K and reviewed his medical records. He noted the abnormal EKG [3] and that K was scheduled to have a stress test a few days after the February 24 to evaluate those findings. He noted that the issues with respect to the ankle and leg remained undiagnosed. Dr. Dresden concluded in his notes:

> It is my opinion with a reasonable degree of medical probability that until he has had a full cardiac workup and a full workup of his lower extremity paresthesias, he should be confined to office-type of work in a sedentary position and not more than 8 hours per day. I have sent a letter to his employer in this regard. Once his workup is complete, I will be glad to review the paperwork to determine whether the 8-hour work restriction is warranted.

The substance of the foregoing was transmitted to Olson at about that time. Olson reviewed the results of the fitness-for-duty evaluation. As noted in the discussion below, he concluded that Dr. Dresden's evaluation meant that K's medical condition was deteriorating. He wrote the Sheriff's Chief Deputy,

> . . . . Apparently, Mr. [K's] condition has not improved since his last fit for duty evaluation with Dr. Dresden. In fact, his current condition places him at increased risk. Dr. Dresden has provided more stringent medical restrictions of sedentary work only. As such, given the unresolved on-going nature of his condition and medical restrictions, temporary light duty can no longer be accommodated. Please place him on the contractual accident and sickness pay maintenance benefit. We will require significant medical improvement with a medical probability of an unrestricted return to full duty prior to allowing his return to work.

K did not agree to take accident and sickness leave and was forced to do so because he properly understood that the Employer would otherwise take the position that there was no

[3] Dr. Dresden incorrectly testified that this was an abnormal stress test. K testified it was an EKG. It is not necessary to address this discrepancy because it does not affect the result herein.

work for him. K received two-thirds of his regular non-overtime pay while on accident and sickness leave under the parties' accident and sickness policy. K regularly worked substantial overtime and the accident and sickness policy did not compensate employees for the loss of their overtime earnings. Under the terms of that policy, the employee who returns to work again takes full benefits under that policy for a subsequent covered situation. Thus, there has been no loss in benefits to K as a result of having taken accident and sickness benefits.

Mr. K did have a stress test as scheduled on February 27, 2009, by his own physician. The test came back "normal" and negated any abnormal finding by the abnormal EKG referenced above. No one from Dr. Dresden's office or the Employer inquired about this test until November, 2009. Neither K nor his physicians reported the results to Dr. Dresden or the Employer until November, 2009. K remained under treatment of the leg and ankle numbness which treatment was concluded in November. Until being released in November, K honestly and correctly believed that he was still under an eight-hour per day restriction and that the Employer would not allow him to return to work as long as the eight-hour restriction lasted. K remained on leave receiving benefits under the accident and sickness policy until November, 2009. No one sought medical reports about K between February 27, 2009, and November, 2009. Neither K nor his physicians made any report to Dr. Dresden or the Employer during that period.

On November 11, 2009, K's physicians released him to return to work without restrictions. The next day, the K notified his Employer of that fact. The Employer again directed him to attend a fitness-for-duty evaluation with Dr. Dresden on November 19, 2009. The Employer refused to reinstate him to work until that evaluation. K attended the evaluation and Dr. Dresden concluded that he could return to work without restrictions and so notified the Employer on that day. K was allowed to return to work that day.

The Union filed the grievance herein and the same was properly processed to arbitration.

RELEVANT AGREEMENT PROVISIONS

Article I-Recognition

Section 1.2 Management Rights: Except as otherwise provided in this agreement, the County retains all of the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline for proper cause; the right to decide the work to be done and the location of work; to contract for work services or materials; to schedule overtime work; to establish or abolish a work classification; to establish qualifications for the various job classifications; however whenever a new position is created or an existing position changed, the County shall establish the job duties and wage level for such new or revised

position in a fair and equitable manner subject to the grievance and arbitration procedure of this Agreement. The County shall have the right to adopt reasonable rules and regulations. Such authority will not be applied in a discriminatory manner. The County will not contract out for work or services where such contracting out will result in the layoff of employees or the reduction of regular hours worked by bargaining unit employees.

Article XII-Accident and Sickness Pay Maintenance Plan

Section 12.1 Accident and Sickness Pay Maintenance Plan: The following benefits will be paid in a case of non occupational accident or illness.

(a) All regular full-time employees will receive thirty (30) calendar days at full pay with coverage starting on the first (1st) day of the accident, with physician authorization, first (1st) day of hospitalization, first day of outpatient surgery and seventh (7th) day of illness.

(b) From the 31st day to the 365th day, an employee will receive two-thirds (2/3 of his/her regular pay. Regular pay means 40 times the employee's regular straight time hourly rate.

(c) Benefits under this plan are not limited to one (1) accident or one (1) illness per year, but are available anytime an employee has an accident or becomes ill; provided that, if an employee has received benefits hereunder and there should be a recurrence of the same condition or illness, no waiting period will apply if there is a recurrence within two (2) weeks on the job, another waiting period will apply…

Section 12.3. Proof of Disability: The County shall have the right to require the submission of adequate medical proof of the employee's disability due to accident or illness. Should there be an extended period of disability, the County shall have the right to require periodic medical proof of the employee's disability.

Section 12.4. Injury or Illness on the Job: If an employee appears to be injured or ill while on the job, or there is reason to believe that an employee needs medical attention, his/her supervisor shall have the right to require the employee to furnish a statement form a licensed physician before returning to work that the employee is capable of performing the work required of his/her job. The County shall send such employee to the doctor at its expense on working time.

Kenosha County Sheriff's Department Policy & Procedure Manual, 7/21/05

Light Duty Assignments. Policy Number 175.4

1. The Kenosha County Sheriff's Department shall create and make available certain restricted "Light Duty" assignments for both sworn and civilian officers.

2. Light duty status is not intended as a permanent assignment. It is temporary in nature and is designed to allow officers and civilian staff to transition from accident/Sickness or Workman's Compensation leave status back to full duty.

3. Placement on light-duty status as well as the restrictions and duration of related assignment(s) shall be determined on a case by case basis. The officer or civilian staff's appropriateness for light-duty shall be determined by the collective authority of his/her physician and the Kenosha County Division of Personnel Services. The Sheriff, or in his/her absence, the Chief Deputy shall have final authority regarding such assignments….

Definitions: Light-Duty: Term used to describe a restricted-duty assignment in which a sworn or civilian officer or other civilian staff performs tasks as assigned that require little physical effort or exertion, and do not exceed medical restrictions placed upon that staff by his/her attending physician.

Correctional Officer light-duty assignments, if physically able, will be restricted to the following activities:

1. Operation of the Control Center on his/her assigned shift.

2. Stationed in designated zone corridor(s) to observe inmate activities on his/her assigned shift.

3. Completing reports or other tasks as assigned by a supervisor(s) that do not exceed the officer's current physical restrictions.

4. The above assignments may require sitting, standing, walking, keyboard and/or portable radio operation, handwriting and or phone usage, as well as visual observation of video monitors and other related security equipment or inmates, etc.

Return to full duty:

The division of personnel services will notify the office manager or sergeant of support services when a detective, deputy sheriff, direct supervision, correctional officer or civilian staff may return to full-duty status.

POSITIONS OF THE PARTIES

The Employer violated the agreement in a number of ways. First, K should have been allowed to continue under his eight hour restriction. The Employer's decisions cannot be arbitrary and capricious. Section 1.1 of the agreement provides that the Employer has the right to apply reasonable rules and regulations and that such authority will not be ". . . applied in a discriminatory manner." The Employer's "Light Duty" policy provides for light duty assignments on a "case-by-case" basis." Any such determination must be reasonable. If the Employer could apply the policy unreasonably, then the policy itself would be unreasonable as applied.

The Employer was unreasonable when it involuntarily placed K on leave in the beginning. The Employer had two options. First, it could have followed K's doctor's recommendation that K was able to work eight hours per day at full duty. Second, it could have followed its own doctor's recommendation that K be given light duty. Instead, it followed neither. Instead, it involuntarily put K on A & S leave. The parties stipulated at hearing that light duty work was available.

As to the first alternative, the only restriction K had from his own doctor was that for a daily limit of eight hours per day. K was performing the full range of his normal duties prior to being forced off duty. K was a senior employee. Everyone knew he habitually worked all of the hours he could work. He regularly volunteered to work additional eight hour shifts on his off days. Thus, there is no way he could have been required to work over eight hours for overtime on a day. The restriction did not affect the Employer under the facts.

Additionally, the Employer made the decision to force K off duty before it sent him to its doctor, Dr. Dresden. The e-mail stated that he had been on "restricted status going on 7 months" and that "he needs to be off until he can come back [on unrestricted status]." [Bracketed material arbitrator's for clarification.]

At a minimum, the Employer should have permitted K to return to work on light duty. He met all of the requirements. The Employer acted because it believed K might be seeking to be on permanent "light duty." First, K never wanted to make light duty permanent. Second, the amount of time K spent on "light duty" was well within the norm for this Employer. The Employer attempted to show that it had taken similar actions in other cases, but each of those situations was inapposite.

Pursuant to RACINE COUNTY VS. IAM, 2008 WI 70 (2008), the statutory issue of unlawful discrimination under the Wisconsin Fair Employment Act and the Americans with Disabilities Act are properly before the arbitrator.

Employer

The Employer did not violate the collective bargaining agreement when it returned K to his previous leave on A & S and preventing him from returning to work until he was free of restrictions. The light duty positions in the jail are available only to those transitioning to work and not as a permanent light duty. The Employer does not have an obligation under the collective bargaining agreement to provide light duty. The Employer alone decides whether it will allow a person with medical restrictions to return to work. It has a legitimate interest in placing a C.O. back in the high-stress and potentially dangerous environment of the jail.

Under Sheriff's Policy 175.4 K was on light duty. His doctor had restricted the number of hours could work. The job required that he be able to work varied and overtime hours at the direction of the Employer. The Sheriff determined that there was no light duty available for K after he returned from work and put him back on A & S. This is consistent with the policy.

The Union argues that the Employer's doctor said that K could return to work on light duty and, therefore, the Employer should have placed K on light duty. The Chief and Robert Reidl both testified that light duty policy was formed within the last decade and had been devised in a manner to only provide certain employees to have light duty while they are healing in order to transition back to work. It is not a permanent alternative. At the inception of the policy it was not anticipated that anyone would regress or that anyone would be on light duty for a period of years. This set of facts was unusual and required a different approach by management.

K was getting worse and not better. The "risk" to the Employer increases if it is obligated to return to work if their status is unstable. Pursuant to the policy the Employer has the right to require periodic proof of an employee's disability or a statement from a doctor that he is capable of performing the work required of his job. The Employer did nothing wrong in its actions. K is an exemplary employee who works all of the overtime he can. However, he did not provide the Employer with updates of his recovery. He ignored doing so. The Employer was entitled to reassurance that he was medically qualified to work.

The employee put the Employer in an unusual position in which it had to decide whether to return K to work with declining health, when it was clear that he had not recovered, and, instead, grown worse. It is the employee's responsibility under the agreement to give the Employer proper medical updates. This he did not do.

The arbitrator does not have authority to consider the claims regarding the ADA and the WFEA. Arbitrators have held that they are to interpret the collective bargaining agreement and not external law.

If the arbitrator should find a violation, the remedy should be very limited. K received 30 days full pay on A & S. K expressed an interest in returning after that 30-day period. However, irrespective of all else, at that time, his nerve condition had not been fully remedied. Therefore, he was not eligible to return to work at that time. When he was cleared by the doctor, he did not diligently seek a return to work. Therefore, K should not receive back pay. Alternatively, he was paid two thirds of his regular rate thereafter. Thus, he is entitled to only one third. The overtime should not be paid. The A & S plan provides that only straight pay be paid while off on leave.

DISCUSSION

1. Statement of the Issues

The parties agreed to the substance of issue 1 and 4. I have restated them for editorial reasons not affecting their substance.

2. Merits of Dispute

The agreement has no specific provisions covering when, or if, the Employer must or should provide light or limited duty for employees. The agreement has several provisions which arguably apply to this situation. First, it provides that the Employer may adopt "reasonable" rules. The Union has not challenged the rule itself. The Union's argument in this case is solely limited to the Employer's application of the current rule under the specific circumstances of this case. The management rights provision also provides:

> The County shall have the right to adopt reasonable rules and regulations. Such authority will not be applied in a discriminatory manner.

Assuming for the purposes of this decision only that the foregoing allows the arbitrator to determine whether the Employer's actions in this case in applying its existing rule were "discriminatory," the Union has failed to establish by a preponderance of the evidence that its actions were "discriminatory."

As used here, the contractual "discriminatory" standard may not be used to change the express language of the unchallenged rule. Under the rule, light duty assignments are for:

> Light duty status is not intended as a permanent assignment. It is temporary in nature and is designed to allow officers and civilian staff to transition from accident/Sickness or Workman's Compensation leave status back to full duty.

As the Employer's witnesses testified, the foregoing rule allows "light duty" status only for those employees who are in the process of recovering and being able to return to "full duty." One of the purposes of this restriction is to reduce the Employer's risk that an employee with a medical condition would have his injury or illness compounded by work or that the employee would be at unusual risk to himself or other employees in connection with his illness or injury. This purpose is in the mutual self interest of the Employer and the Union.

The Employer properly referred K to Dr. Dresden for the evaluations conducted July 31, 2008 and February 24, 2009. The Employer must make judgments based upon medical fact and medical opinion. K's restriction to an eight hour day persisted for a long time. The Employer had not received any interim medical reports since the report from his doctor dated September 5, 2007. I do not believe K's testimony that he did anything to try to get those restrictions lifted in that period. The medical conditions underlying the restrictions were cardiac and potentially severe.

The Employer made the judgment to not provide light duty to K even though it was available based upon Dr. Dresden's report of the February 24, 2009 evaluation. The Employer's "medical" conclusion was that K's recovery from his cardiac surgery was not improving, but worsening and, therefore, K was not entitled to "light duty" under its policy. Sound hindsight, which is always 20-20 vision, indicates that this judgment was, as a matter of history, incorrect. However, the review under the discrimination standard is not by hindsight, but based upon the evidence which the Employer had at the time.

The Employer's judgment was based upon two factors. First, rather than having K's restrictions easing, they worsened. Second, and more importantly, it was based upon Dr. Dresden's medical report which was ambiguous as to if, and when, Dr. Dresden would conclude that K's cardiac condition and/or leg condition was improving, would not improve, or was deteriorating. Olson appears to have extrapolated from that information that K's condition was "deteriorating" without discussing the matter with Dr. Dresden. Dr. Dresden did testify in this proceeding and he stated to the effect that as of the February, 2009, evaluation he, too, viewed K's condition as "deteriorating." I, therefore, conclude that even though the Employer may have made an error in the way it made its judgment, its conclusion was correct that as of the date of the Dr. Dresden's February examination K's condition was "deteriorating." Thus, under the express terms of the policy, K was not entitled to light duty.

I note that as of that time, K's condition was, in fact, temporary. Further, it was, in fact, amenable to treatment. The Employer's actions in denying "light duty" did not threaten K's employment status. If it was improving, it was likely as of that date to be rectified well within allotted leaves of absence under the agreement. The Union's sole theory of discrimination is its view that the Employer should be required to accommodate K's disability. The Employer's action in denying K "light duty" in February, 2009, was not "discriminatory" within the meaning of the agreement and did not otherwise violate the agreement.

More difficult is the issue of whether K was entitled to be returned to his position sooner than he was allowed to return. Several facts would at first blush make it appear that he was. First, Dr. Dresden testified and his report of his July evaluation shows that Dr. Dresden expected that the leg/ankle problem could be diagnosed and treated in one to two months. He was less sanguine in his February report on that issue. Second, K was going to have his stress test conducted in February, 2009, and have his foot/ankle issues evaluated shortly thereafter. The Employer's conduct in telling K he could not return to work until he was free of restrictions precluded the possibility that K's condition could move back into the "improving" category as early as the end of February, 2009. It would appear that K conceivably might have been entitled to have his "light" duty request evaluated again. The Employer's action in precluding K from seeking "light" duty again was compounded by the Employer's lack of any adequate procedures to insure that the Employer obtained current medical information and that current medical information was promptly medically reviewed. Nonetheless, the Union's theory requires the arbitrator to make a quantum leap based upon the medical evidence. Dr. Dresden testified on this point. He stated essentially that, at best, K could have continued in sedentary work until his tests and treatment for both conditions had been completed. In fact the earliest the treatment was completed was September 28, 2009. The Union's theory on this point was based upon hindsight as well. Until the tests were conducted and treatment completed, the evidence is insufficient to conclude that K was "recovering." Had the treatment failed it would have been otherwise. The available evidence from before treatment of the leg/ankle was completed was that Dr. Dresden had anticipated that it could be resolved in one to two months and, in fact, it took about seven months. The Employer's difficulty in these circumstances was compounded by the fact that K was not regularly forthcoming with reports from his doctor and the system of obtaining medical information was not suited to dealing with this situation. It was also compounded by the fact that it was not in K's perceived interest to provide the Employer with medical information which would support not returning him to work. While the Employer may not have handled this period well, the Union has failed to show that there was any "discrimination" in violation of the agreement in not allowing him "light duty" or permitting him to return to work on an eight-hour restriction before September 28, 2009.

This leaves the short period from September 28, 2009, and November 19, 2009, when K actually was returned to work. I am satisfied that the Employer's permitting K to return to work was sufficiently close to the actual date K was medically able to return to work that there was no contract violation.

3. ADA and WFEA

The arbitrator's first responsibility is to interpret and apply the parties' collective bargaining agreement. In this situation, the Union is essentially arguing that the Employer has a duty to reasonably accommodate K's temporary disability under law. This conceivably would result in a conflict between the express terms of the agreement and law. Under the specific circumstances of this case, the arbitrator is without authority to apply either the ADA or WFEA. No determination is expressed or implied as to the authority of the arbitrator in

circumstances in which those laws are incorporated by the parties or are consistent with at least one view of this agreement. Accordingly, I conclude that the Employer did not violate the agreement by not allowing K to return to work during the period in dispute. Accordingly, the grievance is denied.

AWARD

The grievance filed herein is denied.

Dated at Madison, Wisconsin, this 28th day of June, 2010.

Stanley H. Michelstetter II /s/
Stanley H. Michelstetter II, Arbitrator

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