

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION
(AFL-CIO LOCAL 78T)**

and

VOITH PAPER FABRICS

Case #7

No. 69560

A-6400

Appearances:

Richard T. Elrod, Herrling Clark Law Firm Ltd., 800 N. Lynndale Drive, Appleton, WI 54914, appearing on behalf of United Food and Commercial Workers International Union (AFL-CIO Local 78T).

John C. Patzke, Cook & Franke S.C., 660 E. Mason Street, Milwaukee, WI 53202 with **Ann Barry Hanneman**, Cook & Franke, on the brief, appearing on behalf of Voith Paper Fabrics.

ARBITRATION AWARD

Voith Paper Fabrics, aka Voith Fabrics and Voith Paper Fabric & Roll Systems, Inc., hereinafter Company or Employer, and United Food and Commercial Workers International Union (AFL-CIO Local 78T), hereinafter Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to provide a panel of five WERC Commissioners or staff members from which they could jointly select an arbitrator to hear and resolve a dispute between them regarding a five (5) day suspension issued to Bruce Corey. Commissioner Susan J.M. Bauman was selected. A hearing was held on May 26, 2010, in Neenah, Wisconsin. The hearing was transcribed. The record was closed on August 9, 2010, upon receipt of all post-hearing written argument.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

ISSUE

The parties stipulated that the issue to be decided is:

Whether or not the Grievant, Bruce Corey, violated a company safety rule during the October 21, 2009 incident and, if so, what is the appropriate discipline?

BACKGROUND and FACTS

The Grievant in this case, Bruce Corey, has been employed by the Employer¹ as a journeyman maintenance electrician for approximately 23 years. During the time giving rise to the events at issue herein, he worked second shift, from 3:00 p.m. to 11:00 p.m. Corey's job duties included assisting with the installation of equipment at the facility and troubleshooting equipment when problems arose.

On October 21, 2009, the Grievant was contacted by Steve Birling, the leadman in the Needle Department, to assist with a problem on a machine known as the 486 Needle Loom Vario. Birling had been contacted by the operator on this machine because he couldn't get the machine to work properly. Birling, who has experience operating and troubleshooting this machine, noted that there was a light flashing and he did not know why. Birling contacted Corey for assistance.

The 486 machine is utilized to produce large felt rolls used in the production of paper. In order for it to operate in the Vario mode, two "tables" must move into place – an upper feed table that is 40 feet long followed by a smaller aluminum table that serves as a safety device. On the night in question, the upper feed table was in place, but the smaller aluminum table was not in place and was not responding to the operator's commands to move into place.

Corey and Birling spent approximately 30 to 40 minutes examining the machine and trying to determine the nature of the problem. They looked at the control panel, the various switches, and the machine's manuals which included electrical diagrams for the machine. All of the evidence pointed to a small limit switch which, like other switches on the machine, was unnumbered. The men decided that it was necessary to ascertain whether the switch was receiving and passing power, so as to tell the machine that it could continue on to the next phase of the operation.

¹ The Grievant has been employed by the current Employer or its predecessors for all relevant periods.

Corey left the machine area to get his electrical meter so he could test for power at the limit switch. Upon his return, he brought Jason Hiroskey, a journeyman maintenance mechanic, with him. Hiroskey agreed that the limit switch was at issue, and that Corey should test to determine whether the switch was passing power.

Hiroskey stood a few feet away as Corey stepped on a beam to reach the switch. The location of the limit switch required Corey to remove one of the screws to get the cover off the switch in order to test it with his electrical meter. Much to Hiroskey's and Corey's surprise, when Corey removed the screw, the machine started up. The 40 foot upper feed table that all three individuals (Birling who was no longer present, Corey and Hiroskey) had thought was in the home position and could not move any further upward, began to slowly travel upward. Upon seeing that the table was moving, Hiroskey hit the e-stop button which stopped the table's movement.

During the 5 to 6 seconds that it took to hit the e-stop button, the upper feed table had moved between 6 and 8 inches, bumping into an I-beam attached to a piece of Plexiglass, dislocating the I-beam and cracking the Plexiglass. The broken piece of Plexiglass fell on Corey's head, causing a laceration and the need for stitches.

As with all accidents at the plant, an investigation team was convened to review the circumstances. The team determined that the root causes of the incident were working on live equipment and inadequate guarding of hazards. Robert Huck, Manufacturing Manager, determined that the consequences of the incident could have been extremely serious, potentially resulting in Corey's death. On October 29, 2009, Huck issued the following letter to Corey:

October 29, 2009

Subject: Bruce Corey

Bruce:

This letter is a result of an investigation conducted by the company in regards to your accident on Wednesday, October 21, 2009.

The investigation has determined that you did not follow the proper trouble shooting method on the 486 needle loom. Had the proper methods been performed it would have prevented the accident from occurring.

Two specific steps that were not performed:

1. The machine was not locked out.
2. No ladder was used while working on the machine.

The discipline and correction measures for your actions are as follows:

1. You will be suspended for five days starting Friday, October 30th and you will return to work on Friday, November 6th.
2. From the day that you return to work, November 6, 2009, you are expected to follow all safety rules and procedures.

The safety of our employees is our highest priority. This letter puts you on notice that in the future, Voith will not tolerate any unsafe acts that could result in injury [sic] yourself or other employees. Such acts will lead to further discipline up to and including immediate termination.

The Union timely filed a grievance contending that the five day suspension was unwarranted. The grievance was denied at all three steps of the grievance procedure. At the third step, the Union argued that, in addition to discipline being unwarranted, that even if discipline was warranted, a five day suspension was excessive based on past practice. The parties were unable to resolve the matter and the instant arbitration ensued.

Additional facts are included in the **Discussion**, below.

RELEVANT CONTRACT PROVISIONS

ARTICLE II – MANAGEMENT FUNCTIONS

Section 3. The management of the plant and the direction of the working force and of the affairs of the Company shall be vested exclusively in the Company as functions of management. Such functions of management include among others the following:

. . .

- (b) The rights to suspend, discharge, and lay off employees for legitimate reasons.

. . .

- (c) The right to establish reasonable rules and conditions for operating the plant and covering the conduct of employees in the plant . . .

. . .

The performance of such functions shall be subject to the terms and conditions of this contract.

RELEVANT WORK RULES

Voith Fabrics Factory Work Rules

13) **SAFETY:**

For your own protection and the protection of others, each employee must read and follow all safety rules. In case of accident or injury, notify your supervisor or other authorized person.

. . .

Violation of any of these rules will result in disciplinary action to be determined by the seriousness of the violation.

Appleton Mills – Mill Safety Rules

Practices

- 3) All machinery must be stopped and switches locked out before cleaning or repairing, except for maintenance and authorized personnel, who are troubleshooting on machines. Lock outs are not to be removed until work is completed and all guards are replaced. Must use lock out according to OSHA regulations. Refer to lock out procedure book.

WORK INSTRUCTION – Safety Lock Out/Tag Out (Issued 7/30/09)

Page 12 of 12

WORK ON ENERGIZED CIRCUITS

Some electrical maintenance or servicing activities may dictate that work be performed on energized circuits, such as for troubleshooting machine or equipment malfunctions.

DISCUSSION

The parties have stipulated that the question to be decided is whether the Grievant, Bruce Corey, violated a company safety rule on October 21, 2009 and, if so, what is the appropriate discipline. Following the incident of October 21 during which the 486 Needle Loom Vario was damaged significantly and the Grievant was struck on the head by a piece of broken plexiglass, the Employer convened an investigation team. This team determined that the root causes of the accident were working on live equipment and inadequate guarding of hazards. Mr. Corey was notified that he was being given a five day suspension based on not “follow[ing] proper trouble shooting method” by failing to lock out the machine and failing to use a ladder while working on the machine.

At hearing, Robert Huck, Manufacturing Manager, acknowledged that discipline would not have been issued to Mr. Corey for failing to utilize a ladder. The discipline was issued because Mr. Corey had not utilized the lockout/tagout (LOTO) procedure when he was attempting to troubleshoot the 486 machine. The Employer contends that the Voith Fabric Factory Work Rule 13: Safety was violated in that the Grievant did not follow the proper LOTO procedure.

Huck acknowledged that the factory work rules reference to safety rules would have to be a reference to the January 1995 Mill Safety Rules of the Employer's predecessor Appleton Mills inasmuch as no updated safety rules have been issued. That document, under "Practices" states that

All machinery must be stopped and switches locked out before cleaning or repairing, except for maintenance and authorized personnel, who are trouble shooting on machine. Lockouts are not to be removed until work is completed and all guards are replaced. Must use lockout according to OSHA regulations. Refer to lockout procedure book.

The Lockout/Tagout Work Instruction – Safety dated 07/30/09 establishes the minimum requirement for the lockout/tagout of energy isolating devices whenever servicing is done on equipment.² While the general rule of LOTO is that work should not be performed on energized equipment, the Work Instruction does provide the following guidance for work on energized circuits:

Some electrical maintenance or servicing activities may dictate that work be performed on energized circuits, such as for troubleshooting machine or equipment malfunctions. The procedures are as follows:

1. The QI [Qualified Individual] shall make certain that all affected associates are notified of this activity and assure that tools and unnecessary items are removed from the machine or equipment.
2. All other energy sources (hydraulic, pneumatic, spring tension, etc.) must be de-energized or put in a safety condition and locked out if it is not integral to the electrical troubleshooting process.

² There were indications at hearing that, perhaps, this document had not been provided to the Grievant, or that he had not viewed a video regarding the LOTO procedure. There is no question in my mind that the Grievant was fully aware of the LOTO procedures and had, in fact, been involved in the development of the policies on behalf of the company at some point in the past. While the Union might have issues with the manner in which the Employer provides safety training to its employees, particularly those who work second shift, that is not an issue that need be discussed here. The Grievant was aware of the LOTO procedures.

3. Once the troubleshooting activity has identified the need for repair or replacement, the equipment must then be de-energized by the energy isolating device and locked out according to either the general or electrical lockout/tagout procedures whichever is most applicable.
4. **NOTE:** Working on energized parts requires the wearing of appropriate personal protective equipment. Department management will be responsible for specifying appropriate personal protective equipment to be used for compliance with OSHA 1910.335 on Electrical Safety Related Work Practices and NFPA 70E Arc-Flash Hazard Protection.

It is clear, from the language of the LOTO work instruction itself, that there are times that a qualified individual is permitted to perform work on an energized piece of equipment. Employer witness Huck testified that Corey should have locked out the 486 machine when he was engaged in troubleshooting that piece of equipment. Huck did not, however, point to any specific language in the lock out work instruction that Corey violated. It is undisputed that Corey is a qualified individual.

The Grievant and the other two individuals who were involved in identifying the problem with the equipment, Steven Birling and Jason Hiroscopy, all testified to the fact that all inspections of the machine, including a review of the machine's manuals and electrical diagrams, pointed to a problem with the limit switch.³ They were all of the same mind: it was necessary to determine whether power was passing through the limit switch. They were all in agreement that it was necessary that the circuit be energized in order to determine whether the circuit was passing power. Likewise, based on their knowledge and experience with the machine and the positions of the upper table, they all thought that the upper table was in its "home" position and did not expect that it would or could move in the manner that it did. These three individuals, as well as Kevin Reis, the first shift journeyman maintenance mechanic, agreed that it was an appropriate troubleshooting method to confirm that there was electricity going to and from the limit switch.

The testimony of the Company's witness, Daniel Huss, does not support the Employer's contention that Corey should have locked out the machine. Huss is an electrical engineer who has worked for Voith and its predecessors for 20 years. In this capacity, he is involved with all electrical aspects of the plant, including the main power coming into the building, troubleshooting machine installations and troubleshooting machinery. Huss described the ways in which one could troubleshoot the limit switch at issue.

³ None of these persons was aware that there was another limit switch within the machine which was actually the cause of the problem.

According to Huss, you can test for continuity with the power off. This test reveals whether the switch is functioning properly – closes contact and opens contact. This test, however, would not reveal whether power is passing through the switch, the question that Corey needed to determine.

Huss also testified that, with the power on, one could go to the main electrical cabinet, using schematics to determine which switch it is, and measure voltage to determine if it is performing its proper functions. Corey testified that the switches were not numbered at the time of the incident. The record does not make clear that, under those circumstances, it would have been possible for the Grievant to measure the voltage of that particular switch from the main electrical cabinet. Whether Mr. Corey should have (or could have) tested the switch in this manner, failure to do so would not constitute a violation of the logout/tagout procedures as this manner of testing requires the machine to be energized, and the Grievant would not have violated a safety rule.⁴

The third alternative offered by Huss was the use of the PLC (Programmable Logic Controller). This involves the use of a laptop computer to connect to the PLC and then troubleshooting, using the PLC software and the printouts to find the input, and looking at the logic internally in the PLC to see what function should happen or is not happening. To perform this testing requires that the machine be energized. Again, this alternative, even if Corey were competent to use the PLC software with the laptop computer⁵, would not be available if the machine were locked out.

Huss testified that the Grievant did not follow the safety procedures to lock out the machine when removing the limit switch. It is Huss' contention that removing the switch without knowing of all the other circumstances, including the existence of a second limit switch, constituted a violation of a safety rule – LOTO.

If the Grievant had been planning to remove the limit switch the Employer would be correct that he had violated a safety rule, the LOTO procedure, and discipline of some degree would be appropriate. The facts of this case, however, do not support a finding that Bruce Corey violated the LOTO procedure because he was not seeking to remove the limit switch. The testimony of all persons present at the time of the events at issue here are the same: Bruce Corey was attempting to test the limit switch, in place, to determine whether electricity was passing through the switch. In order to perform the test, Corey had to remove the cap on the switch, not the switch itself.

⁴ I do not address the question of whether the Grievant violated some other rule by not utilizing this procedure as the issue is whether a safety rule was violated.

⁵ Corey testified that he has not had any training or opportunity to work with Huss for over five years and has not performed any troubleshooting of the 486 Needle Loom Vario with the computer in that period of time. Additionally, Corey testified that his formal training using computer systems occurred 12 or 13 years ago. Thus, Corey was not able to utilize the PLC as Huss suggested.

Unfortunately, Corey never even got that far. When he loosened a screw on the switch cap the machine started. This could not be anticipated, any more than the fact that the upper table began to move upward from a position that all employees present at the time or earlier believed to have been its highest possible position.

The Employer has never disciplined any employee with more than an oral or written reprimand for violating safety rules. Since January 2009, the company has put a greater emphasis on safety and wants the employees to know that “safety is by far number one for Voith”⁶ and wants to send a strong message to that effect by disciplining employees for safety violations to a greater extent. The Employer feels strongly that Corey committed a serious safety violation on October 21, 2009 and that he could have been killed as a result of the accident that ensued.

I find the Employer’s position to be worthy of support and would readily uphold the five day suspension if the Employer had met its burden of proof that Bruce Corey violated a safety rule. Huck’s testimony failed to provide any alternative to the manner in which the Grievant attempted to troubleshoot the 486 Needle Loom Vario. From Huck’s testimony it would appear that Corey should have been able to determine if power was flowing through the limit switch without the machine being energized. This would not be possible.

Huss’ testimony makes clear that, unless one is testing connectivity which was not at issue, it is necessary to have the system energized to determine whether there is power going through the limit switch. Huss provided alternative means for Corey to have tested whether power was passing through the switch but, unfortunately, these means were not available to Corey due to a lack of training and the failure of the switches to be properly numbered. Huss’ conclusion that Corey violated a safety rule is based on an assumption that Corey was attempting to remove the switch in question, an assumption that is not supported by any fact.

The letter of discipline issued to the Grievant was very specific. Bruce Corey was disciplined because “The machine was not locked out” and “No ladder was used while working on the machine.” As to the ladder issue, the Employer acknowledged that this was not really a basis for discipline. Accordingly, the discipline was based solely on the fact that the machine was not locked out. When a letter of discipline specifically cites a rule alleged to have been violated, the Employer bears the burden of proof to demonstrate that the rule was violated. Here, the Employer has failed to prove that the rule was violated. Although the Company put forth alternative ways in which Corey could have tested the machine to determine whether power was passing, none of these included locking out the machine. Thus, the Employer has not met its burden.

⁶ Huck testimony, at page 20.

The Company is to be commended for its increased concern about safety at the plant, and its desire to send a message to all employees that safety violations will be dealt with in a more significant way than merely a warning or written reprimand as has been the case in the past. However, before Voith can issue discipline, it must prove that a safety rule has been violated. Here, discipline was issued for violation of the LOTO procedure. The Company failed to demonstrate that the LOTO procedure was not followed. It may be that other safety rules were violated on October 21, 2009. Other than the failure to utilize a ladder, for which the Employer admitted no discipline would have been issued, no other violations were cited and no evidence presented. Consequently, no discipline can be issued to Bruce Corey for the events of October 21 even though the incident caused significant damage to the 486 Needle Loom Vario and injured Corey, or that the incident could have killed Corey.

Accordingly, based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

Bruce Corey did not violate a safety rule on October 21, 2009. He should not have been disciplined for his action and, therefore, he is to be made whole for the five days loss of pay he experienced and all references to any safety rule violations are to be expunged from his personnel file.⁷

Dated at Madison, Wisconsin, this 7th day of October, 2010.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator

⁷ The undersigned will retain jurisdiction for a period of sixty (60) days from the issuance of this award to resolve any issues regarding remedy.