

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL 43

and

QUALITY CARRIERS, INC.

Case 3

No. 71650

A-6520

(Thomas Grievance)

Appearances:

Mr. Kyle McCoy, Attorney, Soldon Law Firm L.L.C., 6319 29th Avenue NW, Rochester, Minnesota, appearing on behalf of Teamsters Local 43.

Mr. Dennis Copeland, Quality Carriers, Inc., 4041 Park Oaks Boulevard, Suite 200, Tampa, Florida, appearing on behalf of Quality Carriers, Inc.

ARBITRATION AWARD

Teamsters Local 43, hereinafter “Union” and Quality Carriers, Inc., hereinafter “Employer,” requested that the Wisconsin Employment Relations Commission provide a panel of arbitrators from which to select a sole 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 of the Commission’s staff was selected. Hearing was held before the undersigned on October 25, 2012, in Bristol, Wisconsin. The hearing was not transcribed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

Both parties offered timeliness challenges and the hearing was bifurcated to address the procedural issues of

- 1) whether the discipline was timely, and

2) whether the grievance was timely? Should either be found to be untimely, the next question is what is the appropriate remedy?

BACKGROUND

The issue in this case is limited to addressing the timeliness challenges.

The Union filed a grievance on March 1, 2012 asserting violations of Articles 6, 7, and 10 of the collective bargaining agreement as it related to the one day suspension issued to the Grievant, driver Ron Thomas. The Grievant and Union were made aware of the suspension via certified letter dated January 26, 2012. The letter read as follows:

Dear Mr. Thomas:

We have completed our open investigation dated December 27, 2011 involving your trip of 12/22/11.

We have determined that on 12/22/11 you spotted trailer 701843 at PPG Industries in Oak Creek, WI. (sic) And the wash ticket did not have the PH reading on it.

Company procedure is to insure that the PH reading is on the wash ticket before spotting the trailer at the customer.

Pursuant to Article 10 of the collective bargaining agreement and just cause action, you will be issued a one (1) day suspension for failure to comply with 197 common practices.

This one (1) day suspension will be served upon your first day back to work after you have been released to full duty.

Future actions of this nature will result in further disciplinary action up to and including termination.

Sincerely,

/s/
Bill Mueller

cc: Denny Copeland
Human Resources
Teamsters Local No. 43
Steward
File

DISCUSSION

The issue in this case is whether there is merit to either or both of the timeliness challenges presented by the parties. The Employer asserts that the grievance is procedurally defective in as much as it was filed beyond the 10 day filing deadline. The Union similarly challenges timeliness, asserting that the discipline was issued beyond the 10 day contractual limit.

I start with the Employer's procedural challenge. Article 7, the Grievance and Arbitration clause of the labor agreement provides in pertinent part:

The Union and the Employer agree there shall be not (sic) strike, lockout or tie up. Any grievance will be taken up between the Employer and the Union concerning the interpretation or application of this Agreement in accordance to the following procedures.

A grievance is defined as any controversy between the Employer and the Union concerning compliance with any provisions of this Agreement.

All grievances must be made known in writing to the other party within ten (10) days after the reason for such grievance has occurred.

. . .

Any aggrieved employee shall submit a written grievance to the Employer and a copy to the Steward.

The Employer must make written disposition of the matter within ten (10) days of receipt of the grievance to the employee, Steward and the Union.

In the event the matter is not resolved within thirty (30) days of the Employer's response, it shall be submitted to an independent arbitrator agreeable to both parties. In the event the parties cannot agree to an arbitrator, the grievance shall be submitted to the Wisconsin Joint Committee. If the Joint Committee deadlocks the grievance, it shall be submitted to the Wisconsin Employment Relations Commission for a member of their staff to arbitrate.

The impartial arbitrator shall have the sole and exclusive power and jurisdiction to render a decision on the grievance.

Any decision reached at any step of the grievance procedure shall be final and binding on all parties. The Union and Employer agree to split the cost of the filing fee and any other cost of the arbitrator.

Both parties agree that time is of the essence, however, both parties can agree in writing to an extension of time if it becomes necessary. Failure of either party to abide by the decision, rendered by the parties within ten (10) days following the decision, shall negate the no-strike, no-lockout provision. Monetary grievances upheld by the Arbitration shall be paid to the grievance (sic) within ten (10) days of the decision.

This language establishes that the timeline for filing a grievance is within ten days of when “the reason for the such grievance has occurred.” The Grievant was disciplined in a letter dated January 26, 2012 and the grievance was filed on March 1, 2012. The grievance was therefore filed 34 days following the prescribed timeline.

The Union asserts that the parties agreed to waive the contractual timelines. Bargaining Agent Wes Gable testified that Bill Mueller, Facility Manager, called him via telephone in late December 2011 and asked that they agree to waive the timelines. Mueller testified that no such conversation took place. I therefore must assess the credibility of Gable and Mueller. Gable’s testimony, that the parties verbally agreed to waive the timelines, is self-serving in that it provides a justification for the Union’s late filing of the grievance. Mueller’s testimony is similarly self-serving because while the labor agreement specifically allows the parties to waive the timelines, his denial that an agreement was reached to waive the timelines makes the Union’s grievance untimely.

The Union challenges the timeliness of the discipline, specifically pointing out that the contract requires that discipline be issued within ten days per Article 10. Article 10 provides:

The Employer shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension, shall use the following steps of progression of discipline: (1) written reprimand, (2) written warning, (3) one (1) day suspension and (4) discharge. To be valid, warning letters must be sent to the employee and the Union within ten (10) days of known violation. Except, that no warning notice need be given to an employee before he is suspended if the cause of such discharge or suspension is dishonesty or drunkenness, which may be verified by a sobriety test (refusal to take a sobriety test shall establish a presumption of drunkenness); or taking, being under the influence of, addiction to, or possession of while on duty, LSD, marijuana, or heroin, or possession of controlled substances and/or drugs, either while on duty or on Employer property; recklessness resulting in serious accident while on duty or carrying of unauthorized passengers, or falsification of employment applications or DOT required driver certification documents, or for any discipline arising from the Driver Life Critical Safety Rules Violation Disqualification matrix. The warning notice as herein provided shall not remain in effect for a period of more than nine (9) months from the date of said warning notice. Discharge must be proper written notice to the employee and the Union. Any employee may request an investigation as to his discharge or suspension. Should such

investigation prove that injustice has been done an employee, (sic) he shall be reinstated.

The language of Article 10 therefore supports the Union's position. The "known violation" date for the Grievant's alleged violation was December 22, 2011. The letter of suspension was dated January 26, 2012. The discipline was therefore issued 35 days beyond the contractual timeline.

The Employer argued that the parties had reached an agreement wherein the issuance of the letters of investigation fulfilled the 10 day requirement contained in Article 10 which states that "warning letters must be sent to the employee and the Union within ten (10) days of known violation." The Employer believes this agreement dates back to pre-2010, but concedes that it was not incorporated into the parties 2010 through 2013 labor agreement and that it was not agreed to by the current bargaining agent. Lacking any supporting evidence of the existence of this agreement coupled with Gable's testimony that he had no knowledge of such an agreement, I cannot find that the parties' modified the terms of the labor agreement. Lacking this modification, the Employer's discipline of the Grievant occurred beyond the 10 day time period.

I am therefore presented with untimely issued discipline and untimely grieved discipline. Neither side has complied with the labor agreement. The record establishes that the Employer made its procedural challenge to the Union during the pendency of the grievance. The limited record does not establish whether the Union pointed out it believed the discipline to be the untimely, but given that it believed that the parties had agreed to waive the timelines, it is reasonable to believe that a challenge was not offered. Dismissal is a severe sanction and one that I am unwilling to grant given this record.

AWARD

The procedural challenges are dismissed.

Dated at Rhinelander, Wisconsin, this 9th day of November, 2012.

Lauri Millot /s/

Lauri Millot, Arbitrator