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 Pleasant Prairie, Wisconsin. The hearing was not transcribed. The undersigned issued a decision November 9, 2012 wherein the procedural challenges were dismissed.

The parties convened to hear the merits on November 14, 2012. The hearing was not transcribed. The parties offered post-hearing briefs, the last of which was received by December 14, 2012, whereupon the record was closed.

Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties agreed that the substantive issues are:

Whether there was just cause to suspend the Grievant? If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

. . .

ARTICLE 6. MAINTENANCE OF STANDARDS

Section 1. Protection of Conditions The Employer agrees that all conditions of employment covered by this Agreement shall be maintained at not less than the highest standards in effect at the time of the signing hereof, and the conditions of employment shall be improved whenever specific provisions for improvements are made elsewhere in this Agreement. It is agreed that the provisions of this section shall not apply to inadvertent or bona fide errors made by the Employer or the union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of error. If not corrected within ninety (90) days, such better condition shall remain in effect. However, a request for relief from such error may be filed in writing through the grievance procedure.

It is understood that all conditions that are to be protected must be reduced to writing within ninety (90) days from execution of the Agreement. This provision does not give the Employer the right to impose or continue wages, hours and working conditions less than those contained in this Agreement or in a Rider attached hereto.

. . .

ARTICLE 7. GRIEVANCE AND ARBITRATION

The Union and the Employer agree that there shall not be a 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 procedure.

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

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

Any claim by a driver for additional wages or benefits must be presented in writing to the Employer within thirty (30) days from the time the alleged claim arose. Failure to submit a claim to the Employer within said thirty (30) days shall automatically bar any such claim from being presented.

The 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 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 matter.

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 the 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 (sic) 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 grievant within ten (10) days of the decision.

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ARTICLE 10. DISCHARGE OR SUSPENSION

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 tests (refusal to take a sobriety test shall establish a presumption of drunkenness); or taking, being under the influence of, addition 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 by 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, he shall be reinstated.

. . .

BACKGROUND

The Grievant, Ron Thomas, has been employed as a truck driver with the Employer for 16 years. Thomas's primary duties are to drive semi-tractor/trailers transporting liquid materials throughout the United States. Thomas' home terminal is in Bristol, Wisconsin and his supervisor is Bill Mueller.

The Grievant's employment was interrupted on February 25, 2010 when he was discharged from his employment for various errors and misconduct arising out of two trips. Thomas grieved his termination and was reinstated by an arbitrator on March 21, 2011. The arbitrator modified the discipline and imposed a written reprimand for the Lima, Ohio trip and a written warning for the Jacksonville, Florida trip.

Following his reinstatement, the Grievant, Jim Berry, Union Representative; Bill Mueller, Plant Manager; Wes Gable, President Teamsters Local Union 43, and Denny Copeland, Company Human Resources, met to discuss the Grievant's return to work. The Employer reviewed the violations and misconduct associated with the two trips and indicated to the Grievant that the "next progressive discipline for these offenses (except for improper logging) will be cause for a suspension." The Employer also reminded the Grievant that DOT laws "apply to him", that he was expected to timely return to the terminal, and that he was to communicate with the terminal should he be delayed.

On October 20, 2011, the Employer directed a letter to the Grievant as a follow-up to a September 30, 2011 meeting. During that meeting, the Employer reviewed the investigatory

results relative to the Grievant's conduct for trips on May 2, 2011, May 3, 2011, June 8-10, 2011, and June 10-13, 2011. The Employer concluded that discharge was warranted, but in lieu of discharge, the Employer was electing to:

> …incorporate all of the above infractions and only consider Mr. Thomas to have a written reprimand and a written warning for the following infractions:
>
> 1. Delay of equipment resulting in late delivery of load
> 2. Delay of Equipment
> 3. Improper use of HOS
> 4. Violation of Article 18
> 5. Failure to communicate with terminal as instructed
> 6. Failure to follow Terminal Common Practices and Procedures.

On November 21, 2011 the Grievant was issued another letter wherein the Employer identified the following violations:

1. Delay of Equipment causing a late load
2. Violation of Article 18.
3. Failure to follow Terminal Common Practices.
4. Delay of Equipment in returning to terminal

The letter stated that the discipline "should produce a 1 day suspension," but that the Employer was "again" counting it as a written warning.

A month later, the Employer informed the Grievant and the Union that it was investigating the Grievant's December 22, 2011 trip. The Employer issued the Grievant a one day suspension via letter dated January 26, 2012 which read:

> 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

In response to the one day suspension, 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. The grievance reads:

> My suspension is a direct and deliberate attempt by Bill Mueller to circumvent the C.B.A. citing Article 10...This suspension is unwarranted and unjust...Bill Mueller is citing, pursuant (sic) to Article 10 of the C.B.A. and Just Cause Action that I am receiving a one (1) day suspension for failure to comply with Terminal 197 Common Practices. Teamsters Local 43 and the Bargaining Unit are not signatory to this grouping of papers nor do we recognize Terminal 197 Common Practices as a platform for Bill Mueller and Quality Carriers to issue corrective action and/or discipline to the Driver Corps.

Thomas sought to be made whole, for his record to be expunged of the suspension and for the Employer to prepare and post a notice of apology. The grievance was denied at all steps and is properly before the Arbitrator.

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

DISCUSSION

The Union stipulated that the Employer has the right to promulgate reasonable work rules and further that any employee that violates those rules is subject to disciplinary sanctions provided the discipline is consistent with the terms of the collective bargaining agreement. The Union further stipulated that the Grievant violated rules 26 and 28 of the Terminal 197

Common Practices on December 22, 2011 and that the Employer had the right to discipline the Grievant for this infraction. The only issue in dispute is the level of discipline. The Employer maintains that it followed progressive discipline consistent with Article 10 while the Union asserts that the proper level of discipline was a written reprimand.

Article 10 of the collective bargaining agreement provides that the Employer must have just cause to discipline and that when discipline is imposed, it, "shall use the following steps of progression of discipline: (1) written reprimand, (2) written warning; (3) one (1) day suspension and (4) discharge." This language is clear and unambiguous. Adherence to progressive discipline is therefore not discretionary and the Employer does not have the authority to deviate from the negotiated progressive sanctions unless the employee was guilty of one of the six terminable offenses otherwise contained in the labor agreement.

The Grievant's disciplinary letter states that he was disciplined for "failure to comply with 197 common practices." This was not the first infraction of this nature. Arbitrator Emery's decision, issued on March 21, 2011 modified the termination and "remitted and reduced [it] to a written reprimand for violations occurring on the Lima, Ohio trip and a written warning for violations occurring on the Jacksonville, Florida trip" for committing a number of violations of Terminal 197 Common Practices. Quality Carriers, Inc. Case 2, No. 69942, A-6416 (Emery, 3/11). The October 20, 2011 letter and November 21, 2011 letter both described the Grievant's shortcomings and specifically based the re-issued written reprimand and written warning on his failure to follow Terminal 197 Common Practices. The Grievant has a history of not complying with the Employer's expectations and knew or should have known that his continued violation of the Terminal 197 Common Practices would result in further discipline. Inasmuch as the Grievant had already received a written warning and written reprimand, the next level of discipline is a one day suspension which is exactly what the Employer meted out.

The Union argues that this is a first time violation because the Grievant has never been disciplined for not properly reading the PH and therefore the Employer is limited to imposing a written reprimand. This is incorrect. The Grievant was found to have failed to thoroughly inspect his equipment prior to leaving on the Jacksonville run. Moreover, the Terminal 197 Common Practices are not merely a list of disciplinable offenses, but rather are the Employer's performance expectations of drivers before, during and after a delivery. Examples include the driver dress code, the time to arrive for a dispatch, the expectation that a driver will keep the interior of his/her tractor clean, the expectation that the driver inspect the trailer before departure and ensure it is clean upon return. These are not unrelated conduction expectations, but rather are a series of related tasks associated with the completion of a safe and timely transport consistent with the "Common Practices" of the Company.

The Grievant was well aware that he was expected to comply with the Terminal 197 Common Practices. The Grievant's January 26, 2012 disciplinary letter stated as such. For the next eight months, the Employer continued to communicate its expectations to the Grievant and the Grievant continued to disregard those expectations as evidenced by the Company's

October 20 and November 21 communications which resulted in the imposition of two additional written reprimands and written warnings. The fact that the Employer elected to attempt to rehabilitate the Grievant by issuing multiple written reprimands and written warnings in lieu of imposing the more severe disciplinary sanction of suspension likely lulled the Grievant into believing that he was above being disciplined. That is not the case. The Employer's decision to move to the next level, suspension, was warranted.

The Union points out that Arbitrator Emery specifically denounced "… a theory of cumulative progressive discipline." (emphasis added by Union). Id. at 14. In looking to Arbitrator Emery's decision, it is clear that he was not challenging the Employer's combination of conduct and performance offenses, but rather was chastising the Employer for believing it could impose multiple levels of discipline arising out of same event thereby denying the Grievant any advance notice of performance deficiencies and further, denying the Grievant the opportunity to rectify his behavior.

The Union next argues that the Employer cannot jump to suspension because the record is void of any prior discipline that may be relied on for purposes of progressive discipline. The Union is referring to Article 10 wherein it states that discipline, "shall not remain in effect for a period of more than nine (9) months from the date of said warning notice." The problem with this argument is the February 25, 2010 discipline – termination – no longer exists as a part of the Grievant's disciplinary record. That discipline was overturned and replaced by a written reprimand and written warning, both dated March 21, 2011. The Grievant's disciplinary record "refreshed" with a written warning and written reprimand on October 20, 2012 as evidenced by the Employer's letter to Gable on October 21, 2012 addressing various grievances and concluding:

> 9. The letter written to Ron Thomas was discussed. The Company noted that there were sufficient infractions to discharge Mr. Thomas but explained that it was the Company's desire to see Mr. Thomas follow the rules. The letter therefore stated that Mr. Thomas, rather than being discharged, would have on his record only a written reprimand and a written warning effective with the date of the letter for the infractions listed on the letter. This would provide (sic) opportunity for Mr. Thomas to demonstrate his ability to comply with the rules. The discipline for absenteeism is a separate matter and his current disciplinary record stand (sic) on its own merit.

Because less than nine (9) months had elapsed between the October 20, 2011 discipline and the January 26, 2012 discipline, the Employer was well within its contractual rights to reply on the prior discipline and the Union's assertion that the Employer had deviated from progressive discipline due to the expiration of prior discipline is without merit. [1]

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[1] While the Employer also issued the Grievant the November 21, 2011 letter which again identified the Grievant's misconduct and poor decision-making, it is immaterial to a timeliness determination due to the existence and evidence of acceptance by the Union of the October 20, 2012 letter.

The record provides that the Grievant engaged in the behavior for which he was disciplined and further, that the Employer's decision to impose a one day suspension was consistent with progressive discipline.

AWARD

Yes, there was just cause to suspend the Grievant. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 8th day of March, 2013.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

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